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ILLINOIS DOCUMENTS

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# ILLINOIS

## REGISTER RULES OF GOVERNMENTAL AGENCIES



Volume 24, Issue 47  
November 17, 2000

Pages 16,871 – 17,383

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# **ILLINOIS REGISTER**

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EDITOR'S NOTE: The Cumulative Index and Sections Affected Index will be printed on a quarterly basis. The printing schedule for the quarterly and annual indices are as follows:

- Issue 16 - April 14, 2000: Data Through March 31, 2000
- Issue 29 - July 14, 2000: Data Through June 30, 2000
- Issue 42 - October 13, 2000: Data Through September 30, 2000
- Issue 3 - January 19, 2001: Data Through December 31, 2000 (Annual)



## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED RULES

- 1) Heading of the Part: Eliminate the Digital Divide Program

- 2) Code Citation: 14 Ill. Adm. Code 546

- 3) Section Numbers:
- |         |                         |
|---------|-------------------------|
| 546.10  | <u>Proposed Action:</u> |
| 546.20  | New Section             |
| 546.30  | New Section             |
| 546.110 | New Section             |
| 546.120 | New Section             |
| 546.130 | New Section             |
| 546.140 | New Section             |
| 546.150 | New Section             |
| 546.160 | New Section             |
| 546.170 | New Section             |
| 546.180 | New Section             |
| 546.190 | New Section             |

- 4) Statutory Authority: Implementing and authorized by the Eliminate the Digital Divide Law [30 ILCS 780], Article 5 of the FY 2001 Budget Implementation Act (see Public Act 91-704).

- 5) A Complete Description of the Subjects and Issues Involved: The use of automatic data processing applications is becoming ubiquitous throughout industries and occupations. Those who have a mastery of computer related skills have a distinct advantage in the labor market over those who have had little or no opportunity to learn these skills. Unequal access to computers and telecommunications technology threatens to widen existing economic divisions in society. This disparity of access to new computer related technologies and job opportunities is what has been termed the "digital divide". The goal of the Illinois Eliminate the Digital Divide Law is to increase access to computers and telecommunications technology (e.g., the Internet) to residents of low income communities. The program subsidizes the operation of Community Technology Centers located in communities where 50 percent or more of the students are eligible for the federal school lunch program. State educational agencies, local educational agencies, institutions of higher education, and other public and private nonprofit or for-profit agencies and organizations are eligible to receive grants under this program.

Community Technology Centers provide computer access and educational services using information technology. Centers are diverse in the populations they serve and programs they offer, but are similar in that they provide technology access to individuals, communities, and populations that typically would not otherwise have places to use computer and telecommunications technologies.

The proposed rule provides policies and procedural guidance for the

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED RULES

administration of the Eliminate the Digital Divide Program. Specifically the proposed rule describes the purpose of the program, eligible communities and applicants, authorized activities, allowable costs, limitations, application and review procedures, and reporting requirements.

- 6) Will these proposed rules replace an emergency rule in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this proposed rule contain incorporations by reference? No
- 9) Are there any other proposed rules pending on this Part? No
- 10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State mandate as defined in Section 3(b) of the State mandates Act.

- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking:

Ms. Raya Bogard  
Administrative Code Rules Manager  
Illinois Department of Commerce and Community Affairs  
100 West Randolph Street, Suite 3-400  
Chicago, Illinois 60601  
(312) 814-9593

- 12) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities, and not-for-profit corporations affected: Eligible applicants include educational agencies and public and private nonprofit and for-profit agencies and organizations. Not-for-profit corporations providing the services of a Community Technology Center in an eligible community may apply for grant funds.

- B) Reporting, bookkeeping or other procedures required for compliance: The rule specifies administrative procedures for the Eliminate the Digital Divide Program. The rule includes application procedures and subsequent programmatic and fiscal reporting requirements. The rule also specifies audit, record keeping, and related procedures necessary to safeguard State funds and for prudent administration of authorized programs.

- C) Types of professional skills necessary for compliance: Necessary skills relate to personal computers (PCs), computer application programs, computer networks, telecommunications, and instructional



## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED RULES

techniques. Grantees must also have skills associated with the administration of public programs including, program and financial management skills.

- 13) Regulatory agenda on which this rulemaking was summarized: This rulemaking was not included on either of the 2 most recent regulatory agendas because: This rulemaking was not anticipated and did not appear in a Regulatory Agenda.

The full text of the Proposed Rules is identical to the text of the Emergency Rules appearing in this issue of the Illinois Register on page 474-4.

## ILLINOIS COMMUNITY COLLEGE BOARD

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Administration of the Illinois Public Community College Act

- 2) Code Citation: 23 Ill. Adm. Code 1501

- 3) Section Number: Proposed Action:  
1501.602 Amendment  
1501.604 Amendment

- 4) Statutory Authority: 110 ILCS 805/2-12

- 5) A Complete Description of the Subjects and Issues Involved: The proposed amendments to Sections 1501.602 and 1501.604 increase the ICCB approval threshold from \$25,000 to \$250,000 for locally funded capital projects, excluding protection, health, and safety funded projects. This change will allow colleges more flexibility in planning and implementing small remodeling projects on short notice to meet the demands and needs of students, staff, faculty, and local businesses.

- 6) Will these proposed amendments replace emergency rules currently in effect? No

- 7) Does this rulemaking contain an automatic repeal date? No

- 8) Do these proposed amendments contain incorporations by reference? No

- 9) Are there any other proposed amendments pending on this Part? No

- 10) Statement of Statewide Policy Objectives (if applicable): This rulemaking will not create or expand a state mandate.

- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Written comments may be submitted, for a period of 45 days after this issue of the Illinois Register, to:

Cherie VanMeter  
Administrative Aide  
Illinois Community College Board  
401 East Capitol Avenue  
Springfield, Illinois 62701-1711  
Telephone: (217) 785-0053  
Fax: (217) 524-6195

- 12) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporation affected: None



## ILLINOIS COMMUNITY COLLEGE BOARD

## NOTICE OF PROPOSED AMENDMENTS

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the 2 most recent regulatory agendas because: No Regulatory Agenda was submitted by the ICCB for 1999.

The full text of the Proposed Amendments begins on the next page:

## ILLINOIS COMMUNITY COLLEGE BOARD

## NOTICE OF PROPOSED AMENDMENTS

TITLE 23: EDUCATION AND CULTURAL RESOURCES  
SUBTITLE A: EDUCATION

CHAPTER VII: ILLINOIS COMMUNITY COLLEGE BOARD

## PART 1501

ADMINISTRATION OF THE ILLINOIS PUBLIC COMMUNITY COLLEGE ACT

SUBPART A: ILLINOIS COMMUNITY COLLEGE BOARD ADMINISTRATION

Section	
1501.101	Definition of Terms
1501.102	Advisory Groups
1501.103	Rule Adoption (Recodified)
1501.104	Manuals
1501.105	Advisory Opinions
1501.106	Executive Director
1501.107	Information Request (Recodified)
1501.108	Organization of ICCB (Recodified)
1501.109	Appearance at ICCB Meetings
1501.110	Appeal Procedure
1501.111	Reporting Requirements (Repealed)
1501.112	Certification of Organization (Repealed)
1501.113	Administration of Detachments and Subsequent Annexations
1501.114	Recognition

## SUBPART B: LOCAL DISTRICT ADMINISTRATION

Section	
1501.201	Reporting Requirements
1501.202	Certification of Organization
1501.203	Delineation of Responsibilities
1501.204	Maintenance of Documents or Information
1501.205	Recognition Standards (Repealed)

## SUBPART C: PROGRAMS

Section	
1501.301	Definition of Terms
1501.302	Units of Instruction, Research, and Public Service
1501.303	Program Requirements
1501.304	Statewide and Regional Planning
1501.305	College, Branch, Campus, and Extension Centers
1501.306	State or Federal Institutions (Repealed)
1501.307	Cooperative Agreements and Contracts
1501.308	Reporting Requirements
1501.309	Course Classification and Applicability

## SUBPART D: STUDENTS

## ILLINOIS COMMUNITY COLLEGE BOARD

## NOTICE OF PROPOSED AMENDMENTS

Section	
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1501.402	Admission of Students
1501.403	Student Services
1501.404	Academic Records
1501.405	Student Evaluation
1501.406	Reporting Requirements

## SUBPART E: FINANCE

Section	
1501.501	Definition of Terms
1501.502	Financial Planning
1501.503	Audits
1501.504	Budgets
1501.505	Student Tuition
1501.506	Published Financial Statements
1501.507	Credit Hour Grants
1501.508	Special Populations Grants
1501.509	Workforce Preparation Grants
1501.510	Reporting Requirements
1501.511	Chart of Accounts
1501.514	Business Assistance Grants (Repealed)
1501.515	Advanced Technology Equipment Grants
1501.516	Capital Renewal Grants
1501.517	Retirees Health Insurance Grants
1501.518	Uncollectible Debts
1501.520	Lincoln's Challenge Grants
1501.521	Technology Enhancement Grants
1501.522	Deferred Maintenance Grants

## SUBPART F: CAPITAL PROJECTS

Section	
1501.601	Definition of Terms
1501.602	Approval of Capital Projects
1501.603	State Funded Capital Projects
1501.604	Locally Funded Capital Projects
1501.605	Project Changes
1501.606	Progress Reports (Repealed)
1501.607	Reporting Requirements
1501.608	Approval of Projects in Section 3-20.3.01 of the Act
1501.609	Completion of Projects Under Section 3-20.3.01 of the Act
1501.610	Demolition of Facilities

## SUBPART G: STATE COMMUNITY COLLEGE

## Section

## ILLINOIS COMMUNITY COLLEGE BOARD

## NOTICE OF PROPOSED AMENDMENTS

1501.701	Definitions of Terms
1501.702	Applicability
1501.703	Recognition
1501.704	Programs
1501.705	Finance
1501.706	Personnel
1501.707	Facilities

## SUBPART H: PERSONNEL

Section	
1501.801	Definition of Terms
1501.802	Sabbatical Leaves

**AUTHORITY:** Implementing and authorized by Articles II and III and Section 6-5.3 of the Public Community College Act [110 ILCS 805/Arts. II and III and 6-5.3].

**SOURCE:** Adopted at 6 Ill. Reg. 14262, effective November 3, 1982; codified at 7 Ill. Reg. 2332; amended at 7 Ill. Reg. 16118, effective November 22, 1983; Sections 1501.103, 1501.107 and 1501.108 recodified to 2 Ill. Adm. Code 5175 at 8 Ill. Reg. 6032; amended at 8 Ill. Reg. 14262, effective July 25, 1984; amended at 8 Ill. Reg. 19383, effective September 28, 1984; emergency amendment at 8 Ill. Reg. 22603, effective November 7, 1984, for a maximum of 150 days; emergency amendment at 8 Ill. Reg. 24299, effective December 5, 1984, for a maximum of 150 days; amended at 9 Ill. Reg. 9470, effective June 11, 1985; amended at 9 Ill. Reg. 16813, effective October 21, 1985; amended at 10 Ill. Reg. 3612, effective January 31, 1986; amended at 10 Ill. Reg. 14658, effective August 22, 1986; amended at 11 Ill. Reg. 7606, effective April 8, 1987; amended at 11 Ill. Reg. 18150, effective October 27, 1987; amended at 12 Ill. Reg. 6660, effective March 25, 1988; amended at 12 Ill. Reg. 15973, effective September 23, 1988; amended at 12 Ill. Reg. 16699, effective September 23, 1988; amended at 13 Ill. Reg. 1182, effective January 13, 1989; amended at 13 Ill. Reg. 14904, effective September 12, 1989; emergency amendment at 14 Ill. Reg. 299, effective November 9, 1989, for a maximum of 150 days; emergency amendment expired on April 9, 1990; amended at 14 Ill. Reg. 4126, effective March 1, 1990; amended at 14 Ill. Reg. 10762, effective June 25, 1990; amended at 14 Ill. Reg. 11771, effective July 9, 1990; amended at 14 Ill. Reg. 13997, effective August 20, 1990; expedited correction at 18 Ill. Reg. 3027, effective August 20, 1990; amended at 15 Ill. Reg. 10929, effective July 11, 1991; amended at 16 Ill. Reg. 12445, effective July 24, 1992; amended at 16 Ill. Reg. 17621, effective November 6, 1993; amended at 17 Ill. Reg. 1853, effective February 2, 1993; amended at 18 Ill. Reg. 4635, effective March 9, 1994; amended at 18 Ill. Reg. 8906, effective June 1, 1994; amended at 19 Ill. Reg. 2299, effective February 14, 1995; amended at 19 Ill. Reg. 2816, effective February 21, 1995; amended at 19 Ill. Reg. 7515, effective May 26, 1995; amended at 21 Ill. Reg. 5891, effective



## ILLINOIS COMMUNITY COLLEGE BOARD

## NOTICE OF PROPOSED AMENDMENTS

- \* April 22, 1997; amended at 22 Ill. Reg. 2087, effective January 12, 1998; amended at 22 Ill. Reg. 17472, effective July 10, 1998; amended at 24 Ill. Reg. 249, effective December 21, 1999; amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART F: CAPITAL PROJECTS

## Section 1501.602 Approval of Capital Projects

- a) Notwithstanding any provision to the contrary (see subsection (b) and Section 1501.604(b)), requests for approval of capital projects shall be submitted to the ICCB on the forms prescribed by the ICCB.
- b) A project requiring the expenditure of state or local funds for purchase, construction, remodeling, or rehabilitation of physical facilities at a primary or secondary site shall have prior ICCB approval except the following:
  - 1) locally-funded projects that meet the definition of a maintenance project as defined in Section 1501.601, or
  - 2) locally funded projects that result in no change in room use, or
  - 3) locally funded projects for which the total estimated cost is less than \$250,000\$257,000.
- c) A District Site and Construction Master Plan shall be filed with the ICCB by January 1, 1991. The purpose of the plan is to apprise the ICCB of possible primary site new construction and secondary site acquisition/construction plans for the next three years throughout the district. The plan should be updated, as needed, to ensure that any project submitted for approval has been reflected in the district plan on file with the ICCB at least two months prior to submission of the project. Any primary site new construction or secondary site acquisition/construction projects must be reflected in the plan in order to receive consideration for approval. The plan, at a minimum, shall consist of a map of the district showing the location of all facilities owned by the district or leased for a period exceeding five years and a narrative describing the district's:
  - 1) Current permanent facilities where additions are planned.
  - 2) General plans for future site acquisition or acquisition/construction of permanent facilities either on the primary site or secondary sites. The location may be identified in terms of the general geographic area within the district.
  - 3) Proposed schedule for acquiring additional sites, constructing additions to existing facilities, or acquiring/constructing new permanent facilities.
  - 4) The intended use of all proposed site acquisitions and facility acquisition/construction.
- d) The authority to approve locally funded projects is delegated to the President/CEO Executive-Director of the ICCB, who shall in turn report such actions to the ICCB.

## ILLINOIS COMMUNITY COLLEGE BOARD

## NOTICE OF PROPOSED AMENDMENTS

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

## Section 1501.604 Locally Funded Capital Projects

- a) All locally funded capital projects shall meet the same codes or standards listed in Section 1501.603(f)(2).
- b) Requests for ICCB approval of locally funded capital projects shall be submitted using forms prescribed by the ICCB. All locally funded capital projects shall receive prior ICCB approval except those meeting any one of the following criteria:
  - 1) A project which meets the definition of a maintenance project as specified in Section 1501.601.
  - 2) A project which does not create a change in room use.
  - 3) A project which is less than \$250,000 \$257,000 regardless of the work being performed.
- c) Requests for ICCB approval of locally funded capital projects shall be submitted to the ICCB according to the following criteria:
  - 1) All capital projects other than those excluded in Section 1501.604(b) require ICCB approval during the design phase of the project.
  - 2) Capital projects estimated to cost in excess of \$2.5 million shall be reported to the ICCB following a project needs assessment.
  - 3) The final budget and scope of the project shall be reported to the ICCB after bids are received but before contracts are awarded. If the budget or scope exceeds that approved by the ICCB, the project shall be resubmitted for approval.
- d) Application Criteria for New Construction projects at the Primary Site. Applications for new construction projects submitted to the ICCB and shall have attached to them the following:
  - 1) A copy of the resolution or motion passed by the local board of trustees approving the budget and scope of the project.
  - 2) A statement identifying the source of local funds for the project.
  - 3) For primary sites, certification shall be provided that a suitable construction site is available. Suitability is determined through a site feasibility study. The feasibility study shall address, at a minimum, the following:
    - A) The location of the site in relation to geography and population of the entire district and its relation to sites of the district's other colleges, community college facilities in other contiguous districts, and other higher education facilities in contiguous districts.
    - B) The impact on the surrounding environment, including the effect of increased traffic flow.
    - C) Accessibility to the site by existing and planned highways and/or streets.

## ILLINOIS COMMUNITY COLLEGE BOARD

## NOTICE OF PROPOSED AMENDMENTS

- D) Cost of development of the site in relation to topography, soil condition, and utilities.
- E) Size of the proposed site in relation to projected student population (as determined by census data) and land cost.
- F) The number, location, and characteristics (types of terrain, geography, roadway access, and suitability of the site for building purposes) of alternative sites considered.
- 4) Requests for primary site acquisition shall include three appraisals of the property.
- 5) Evidence of need for the space requested shall be provided either on a general enrollment basis as specified in Section 1501.603(e)(4)(C) or a specific program need basis as specified in Section 1501.603(e)(4)(D).
- 6) The project shall be within the mission of a community college as set forth in Section 1-2(e) of the Act.
- g) Application Criteria for Projects Funded in Accordance with Section 3-37 of the Act. In addition to the above, applications for projects proposed for funding in accordance with Section 3-37 of the Act must include:
- 1) A copy of the proposed lease agreement showing that income is sufficient to pay the costs of constructing or acquiring and operating and maintaining the facility for the life of the installment loan arrangement entered into by the college.
  - 2) A copy of the loan arrangement entered into by the college showing the installment costs to be incurred by the college.
  - 3) Any other agreement between the college and another group which commits funds toward the project by that group.
- f) Application Criteria for Remodeling and Rehabilitation Projects. Projects to remodel and rehabilitate a facility shall require submittal of the following:
- 1) A copy of the resolution or motion passed by the local board of trustees approving the budget and scope of the project.
  - 2) A statement identifying the source of local funds for the project.
  - 3) A summary detailing the effects of the remodeling on space usage (classrooms, laboratories, offices...).
  - 4) A justification statement regarding the need to remodel.
- g) Application Criteria for Secondary Site Projects. Projects for the acquisition/construction of a new site and/or structure for purposes other than a primary site facility and projects for acquisition of sites and/or structures adjacent to the primary site shall require submittal of the following:
- 1) A resolution by the local board of trustees stating that:
    - A) Funds are available to procure the site.
    - B) The programs offered have been approved by the ICCB and IBHE or approval of these stated programs by those boards is pending.
  - 2) Copies of at least two appraisals of the property.

## ILLINOIS COMMUNITY COLLEGE BOARD

## NOTICE OF PROPOSED AMENDMENTS

- 3) Verification that the condition of the facility is not a threat to public safety. This shall include tests of structural integrity, asbestos, toxic materials, underground storage tanks, and other hazardous conditions. (Findings regarding the existence of these hazards shall not preclude the procurement of the site/structure but the knowledge of the hazardous condition and any costs incurred in correcting the condition shall be incorporated into the total cost of procuring the facility.)
- 4) Identification of the location of the site and its relationship to the main campus, community college facilities in other contiguous districts, and other higher education facilities in contiguous districts.
- 5) Identification of all estimated costs associated with the purchase and any subsequent construction and/or rehabilitation of the site/structure.
- h) Construction projects for use by the college which are financed in whole or in part by college foundations are to be submitted for ICCB approval as locally funded projects.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)



## DEPARTMENT OF INSURANCE

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Derivative Instruments
- 2) Code Citation: 50 Ill. Adm. Code 806
- 3) Section Numbers: Proposed Action:  
806.40 Amendment
- 4) Statutory Authority: Implementing Article VIII and authorized by Sections 126.8 and 401 of the Illinois Insurance Code [215 ILCS 5/Art. VIII and 401].
- 5) A Complete Description of the Subjects and Issues Involved: Sections 126.18 and 126.31 of the Illinois Insurance Code [215 ILCS 5/126.18 and 126.31] prohibit insurers from using derivative instruments for replication and synthetic asset transactions until "the Director promulgates reasonable rules that set forth methods of disclosure, reserving for risk based capital, and determining the asset valuation reserve for these investments." The NAIC has adopted changes to the annual statement blank, specific accounting rules, and specific requirements for risk based capital treatment of derivatives used for replication transactions. Our regulatory requirements use each of these components. The proposed amendment to Part 806 lifts the prohibition against the use of derivative instruments for replication and synthetic asset purposes.

6) Will this proposed amendment replace an emergency amendment currently in effect? No

7) Does this amendment contain an automatic repeal date? No

8) Does this proposed amendment contain incorporations by reference? Yes.  
Please see Section 806.40(e)(2).

9) Are there any other proposed amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: This amendment will not require a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to comment on this proposed rulemaking may submit written comments no later than 45 days after the publication of this Notice to:

James C. Rundblom	Susan Anders
Staff Attorney	Paralegal
Department of Insurance	Department of Insurance
320 West Washington	320 West Washington

## DEPARTMENT OF INSURANCE

## NOTICE OF PROPOSED AMENDMENTS

Springfield, Illinois 62767-0001 Springfield, Illinois 62767-0001  
(217) 785-8559 (217) 785-8220

12) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporations affected: None
- B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this amendment was summarized: January 2000

The full text of the Proposed Amendments begins on the next page:

## DEPARTMENT OF INSURANCE

## NOTICE OF PROPOSED AMENDMENTS

## TITLE 50: INSURANCE

## CHAPTER I: DEPARTMENT OF INSURANCE

## SUBCHAPTER j: INVESTMENTS OF DOMESTIC COMPANIES

## PART 806

## DERIVATIVE INSTRUMENTS

Section	Purpose
806.10	Applicability
806.20	Definitions
806.30	Definitions
806.40	Guidelines and Internal Control Procedures
806.50	Documentation Requirements
806.60	Trading Requirements

**AUTHORITY:** Implementing Article VIII and authorized by Sections 126.8 and 401 of the Illinois Insurance Code [215 ILCS 5/Art. VIII and 401].

**SOURCE:** Adopted at 22 Ill. Reg. 15300, effective August 10, 1999; amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

#### Section 806.40 Guidelines and Internal Control Procedures

- a) Before engaging in a derivative transaction, an insurer shall establish written guidelines that shall be used for effecting and maintaining the transactions. The guidelines shall:
  - 1) Address investment or, if applicable, underwriting objectives, and risk constraints, such as credit risk limits;
  - 2) Address permissible transactions and the relationship of those transactions to its operations, such as a precise identification of the risks being hedged by a derivative transaction; and
  - 3) Require compliance with internal control procedures.
- b) An insurer shall have a system for determining whether a derivative instrument used for hedging has been effective. In so doing a company should set specific criteria at the inception of the hedge as to what will be considered "effective" in measuring the hedge and then apply those criteria in the ongoing assessment based on actual hedge results.
- c) An insurer shall have a credit risk management system for over-the-counter derivative transactions that measures credit risk exposure using the counterparty exposure amount.
- d) An insurer's board of directors shall, in accordance with Section 126.4 of the Illinois Insurance Code [215 ILCS 5/126.4]:
  - 1) Approve the guidelines required by subsection (a) of this Section and the systems required by subsections (b) and (c) of this Section; and
  - 2) Determine whether the insurer has adequate professional personnel, technical expertise and systems to implement

## DEPARTMENT OF INSURANCE

## NOTICE OF PROPOSED AMENDMENTS

## investment practices involving derivatives.

- e) An insurer may use derivatives for replication transactions as permitted pursuant to Sections 126.18 and 126.31 of the Illinois Insurance Code [215 ILCS 5/126.18 and 126.31]. An insurer engaging in replication transactions shall:
    - 1) Comply with the requirements, instructions and guidance of the National Association of Insurance Commissioners with respect to:
      - A) The disclosure and annual and quarterly statement reporting of such replication transactions;
      - B) The inclusion of such transaction in the insurer's RBC Report (as required by Section 35A-10 of the Illinois Insurance Code [215 ILCS 5/35A-10]); and
      - C) If applicable, the calculation and reporting of the asset valuation reserve for such transaction;
    - 2) Comply with the filing requirements for Replication (Synthetic Asset) Transactions (RSATs) contained in the Purposes and Procedures Manual of the Securities Valuation Office of the National Association of Insurance Commissioners;
    - 3) File with the Director of Insurance a duplicate copy of all RSAT filings made with the Securities Valuation Office of the National Association of Insurance Commissioners; provided, that the Director of Insurance may waive this duplicate filing requirement to the extent deemed appropriate;
    - 4) Have a system for determining whether a replication transaction has been effective in replicating the intended investment position; and
    - 5) Include all replicated investment positions in calculating compliance with the limitations on investments contained in Article VIII of the Illinois Insurance Code [215 ILCS 5/Art. VIII]; provided, that no replicated investment position shall be held pursuant to the additional investment authority contained in Sections 126.20 and 126.32 of the Illinois Insurance Code [215 ILCS 5/126.20 and 126.32].
- AGENCY NOTE:** For purposes of determining whether internal control procedures are in compliance with this Part, the Department may consider, but is not limited to, the following items: that only board authorized individuals can effect derivative instrument transactions, that there is a separation of administrative functions from trading functions, that periodic reporting to chief investment officer of open positions occurs and that periodic assessing of effectiveness of hedging transaction be conducted by a designated person.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)



## GOVERNMENTAL ORGANIZATION

## NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: PUBLIC INFORMATION, RULEMAKING AND ORGANIZATION
- 2) Code Citation: 2 Ill. Adm. Code 150
- 3) Section Numbers: Proposed Action:  
150.220 Amendment  
APPENDIX A Amendment
- 4) Statutory Authority: The Legislative Information System Act [25 ILCS 145] and Section 5-15 of the IAPA [5 ILCS 100/3-15].
- 5) A Complete Description of the Subjects and Issues Involved: This is a revision of the LIS protocols pertaining to access to LIS material.
- 6) Will this rulemaking replace any emergency rulemaking currently in effect?  
No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this rulemaking contain incorporations by reference? No
- 9) Are there any other proposed rulemakings pending on this Part? No
- 10) Statement of Statewide Policy Objectives: This rulemaking is not expected to require local governments to establish, expand or modify their activities in such a way as to require additional expenditures from local revenues.
- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Public comments may be submitted, in writing or by phone, for a period of 45 days after the date of this publication in the *Illinois Register*, to:
- Jack Hatcher  
Legislative Information System  
705 Stratton Building  
Springfield IL 62706  
217/782-3944
- 12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: None

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for compliance: None

## GOVERNMENTAL ORGANIZATION

## NOTICE OF PROPOSED AMENDMENT

- 13) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the 2 most recent regulatory agendas because: LIS was unaware of the need for this rulemaking until its omission was raised by auditors.

The full text of the Proposed Amendment begins on the next page:

## GOVERNMENTAL ORGANIZATION

## NOTICE OF PROPOSED AMENDMENT

## TITLE 2: GOVERNMENTAL ORGANIZATION

## SUBTITLE A: LEGISLATIVE AGENCIES

## CHAPTER V: LEGISLATIVE INFORMATION SYSTEM

## PART 150

## PUBLIC INFORMATION, RULEMAKING AND ORGANIZATION

## SUBPART A: PUBLIC INFORMATION

Section  
150.10 Access to Legislative Information System Information

## SUBPART B: PROCEDURES FOR ENACTMENT OF RULES

Section  
150.105 Introduction  
150.110 Initiation  
150.120 Enactment  
150.130 Application  
150.140 Emergency Rules

## SUBPART C: LEGISLATIVE INFORMATION SYSTEM ORGANIZATION

Section  
150.205 Introduction  
150.210 Organization Chart  
150.220 Description of Agency Organization

## APPENDIX A Organization Chart

**AUTHORITY:** Implementing Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100/5-15] and authorized by Section 6 of the Legislative Information System Act [25 ILCS 145/6].

**SOURCE:** Organization rules adopted at 2 Ill. Reg. 38, p. 60, effective September 22, 1978; amended at 3 Ill. Reg. 40, p. 136, effective October 5, 1979; amended at 5 Ill. Reg. 3457, effective March 20, 1981; rulemaking rules adopted at 2 Ill. Reg. 38, p. 71, effective September 22, 1978; rules repealed, new rules adopted and codified at 7 Ill. Reg. 16918, effective December 29, 1983; amended at 14 Ill. Reg. 3049, effective February 14, 1990; amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART C: LEGISLATIVE INFORMATION SYSTEM ORGANIZATION

## Section 150.220 Description of Agency Organization

- a) Legislative Information System: The "System" was created by Public Act 80-683 [25 ILCS 145] (1111-Rev-Stat-1987-~~ch-63~~-~~para-42~~-~~ii-et~~

## GOVERNMENTAL ORGANIZATION

## NOTICE OF PROPOSED AMENDMENT

~~seq-7~~ which provides for the appointment of the System membership and the terms of office. The main responsibility of the System is the establishment of policy and procedures and approval of projects undertaken by the System.

- b) Advisory Committee: The Advisory Committee was created by Public Act 80-683 [25 ILCS 145] (1111-Rev-Stat-1987-~~ch-63~~-~~para-42~~-~~ii-et~~ ~~seq-7~~ for the purpose of making recommendations for conceptualization, design and implementation of applications considered or adopted by the System.

- c) Executive Director and Deputy Director: The Executive Director and Deputy Director are responsible for implementing the policies and procedures established by the System, implementing projects approved by the System and supervising the daily operations of the agency.

- d) Administration: Responsible for all the fiscal and personnel operations of the agency. This section also works closely with other fiscal operations in the General Assembly and other agencies to coordinate accounting systems and reporting. Administration is also responsible for the receipts and disbursements of the Equipment Revolving Fund.

- e) Programming Services. Monitors the various programs used in the Bill Status System, Calendars, Journals, Digests, and the accounting system. Using feedback from users of these systems, this area makes adjustments and reprograms to improve productivity. Programming Services is also involved in the development of new software applications to assist the General Assembly and related agencies.

- f) Support Services: Provides customer support functions to users of the system. This section answers phone inquiries regarding bill status and trains current users on the dial-up system. This area is responsible for new client development. Its responsibilities include issuing contracts and training new users.

- g) Systems Services: Supports the operating systems, back-end software, and all the hardware that supports all other functions of the agency. This area ensures that the mainframe, LAN, and other related equipment function properly. Computer Operations, a subdivision of Systems Services, is responsible for monitoring of the mainframe and other computer equipment and is the messenger service for the agency. This area routes various jobs to printers or output devices.

- h) Text Services: Develops and provides support for the following applications: Bill Drafting, Statutory Retrieval, Statute Updater, Journal Writing, Enrolling and Engrossing, Debate Transcription, Administrative Code, Illinois Register, and Staff Uses.

- d) Systems-Programming-----This-section-is-responsible-for-maintaining-the-computer---operating---systems---and-the-preparation-of-evaluations-regarding-the-impact-on-the-system-of-present-and-proposed-applications:

- e) Applications-----Programming-----This-section-is-responsible-for-maintaining-the-current-application-programs---developing---new-applications-and-evaluating-proposed-applications:



GOVERNMENTAL ORGANIZATION

NOTICE OF PROPOSED AMENDMENT

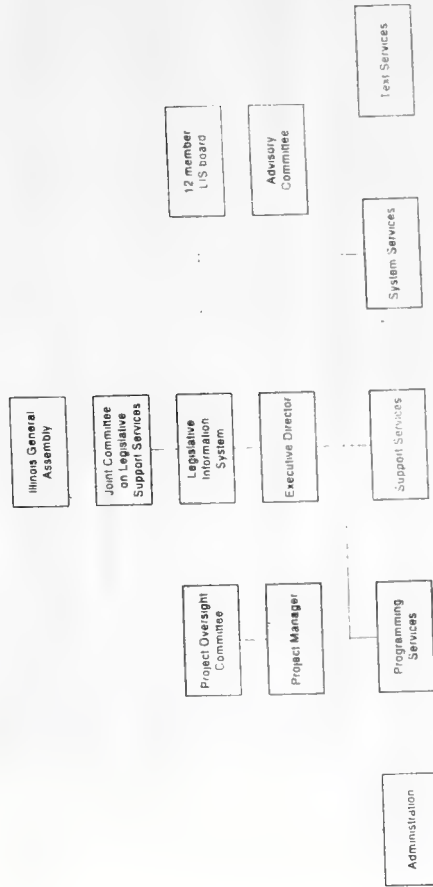
- f) Administrative--Services-----This--section--is--responsible--for--the maintenance--of--all--personnel,--equipment--and--financial--records,--the processing--of--all--personnel--actions,--vouchers,--obligations, requisitions,--etc,--providing--secretarial--and--clerical--services,--and receptionist--services.
- g) Staff--Services-----This--section--is--responsible--for--the--interface between--BIS--and--the--end--user,--for--the--evaluation--of--proposed application--program--modifications,--for--the--training--of--users--on--the various--applications--and--for--providing--assistance--to--users--as required.
- h) Photocomposition--Services-----This--section--is--responsible--for--the scheduling,--development--and--implementation--of--photocomposition applications--and--the--production--of--camera--ready--copy--for--delivery--to the--printer.
- i) Computer--Operations-----This--section--is--responsible--for--the--physical operations--of--the--computer--facility,--and--for--the--scheduling, reproduction--and--distribution--of--reports--requested--by--users.
- j) Text--Processing-----This--section--is--responsible--for--the--interface between--BIS--and--users--of--the--text--processing--system,--the--training--of users,--monitoring--quality--control--and--providing--programming assistance.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

GOVERNMENTAL ORGANIZATION

NOTICE OF PROPOSED AMENDMENT

Section 150. APPENDIX A Organization Chart



## GOVERNMENTAL ORGANIZATION

## NOTICE OF PROPOSED AMENDMENT

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## LEGISLATIVE INFORMATION SYSTEM

## NOTICE OF PROPOSED REPEALER

- 1) Heading of the Part: Purchasing
- 2) Code Citation: 44 Ill. Adm. Code 575
- 3) Section Numbers:

575.5	<u>Proposed Action:</u>
575.10	Repeal
575.20	Repeal
575.30	Repeal
575.40	Repeal
- 4) Statutory Authority: The Legislative Information System Act [25 ILCS 145] and Section 1-30 of the Illinois Procurement Code [30 ILCS 500/1-30].
- 5) A Complete Description of the Subjects and Issues Involved: LIS is repealing its purchasing rules adopted under the old Purchasing Act that has now been supplanted by the Illinois Procurement Code.
- 6) Will this rulemaking replace any emergency rulemaking currently in effect?  
No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this rulemaking contain incorporations by reference? No
- 9) Are there any other proposed rulemakings pending on this Part? No
- 10) Statement of Statewide Policy Objectives: This rulemaking is not expected to require local governments to establish, expand or modify their activities in a way that requires additional expenditures from local resources.
- 11) Time, Place and Manner in which interested persons may comment on this proposed repealer: Public comments may be submitted, in writing or by phone, for a period of 45 days after the date of this publication in the *Illinois Register*, to:  

Jack Hatcher  
Legislative Information System  
705 Stratton  
Springfield IL 62706  
217/782-3944
- 12) Initial Regulatory Flexibility Analysis:
  - A) Types of small businesses, small municipalities and not for profit corporations affected: None



## LEGISLATIVE INFORMATION SYSTEM

## NOTICE OF PROPOSED REPEALER

B) Reporting, bookkeeping or other procedures required for compliance:  
None

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the 2 most recent regulatory agendas because: LIS was unaware of the need for this rulemaking until its omission was raised by auditors.

The full text of the Proposed Repealer begins on the next page:

## LEGISLATIVE INFORMATION SYSTEM

## NOTICE OF PROPOSED REPEALER

TITLE 44: GOVERNMENT CONTRACTS, PROCUREMENT AND  
PROPERTY MANAGEMENT

SUBTITLE B: SUPPLEMENTAL PROCUREMENT RULES

CHAPTER VII: LEGISLATIVE INFORMATION SYSTEM

## PART 575

## PURCHASING (REPEALED)

## Section

## 575.5 Introduction

## 575.10 General Policy Statement

## 575.20 Procurement of Goods and Services

## 575.30 Right of Rejection

## 575.40 Governing Provisions

**AUTHORITY:** Implementing and authorized by "AN ACT in relation to a Legislative Information System" (Ill. Rev. Stat. 1983, ch. 63, pars. 42.11 et seq.) and Section 5 of The Illinois Purchasing Act (Ill. Rev. Stat. 1983, ch. 127, par. 132.5).

**SOURCE:** Adopted at 4 Ill. Reg. 43, p. 116, effective October 15, 1980; codified at 8 Ill. Reg. 15928; repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## Section 575.5 Introduction

The Legislative Information System has adopted this Part governing purchasing pursuant to "An Act in relation to a Legislative Information System" (Ill. Rev. Stat. 1983, ch. 63, pars. 42.11 et seq.) and Section 5 of the Illinois Purchasing Act (Ill. Rev. Stat. 1983, ch. 127, par. 132.5). Pursuant to Section 5 of the Illinois Purchasing Act, this Part has been approved by the Department of Central Management Services, effective October 15, 1980.

## Section 575.10 General Policy Statement

- a) The Legislative Information System is a legislative service agency created by Public Act 80-683.
- b) The Legislative Information System recognizes the necessity for economy in governmental expenditure and is committed to the practice of competitive bidding.
- c) The Legislative Information System is committed to the principal of centralized purchasing. Centralized purchasing facilities maintained by Executive Branch agencies shall be used whenever mandated by law. In addition, centralized purchasing facilities shall be used in cases where use is not mandated but such use will result in timely, economical and efficient procurement of goods and services.

## Section 575.20 Procurement of Goods and Services

## LEGISLATIVE INFORMATION SYSTEM

## NOTICE OF PROPOSED REPEALER

- a) The Legislative Information System will enter into service agreements in accordance with the Illinois Purchasing Act (Ill. Rev. Stat. 1983, ch. 127, pars. 132.1 et seq.).
- b) The Legislative Information System will utilize the expertise of the Executive Branch agencies central purchasing facilities in the process of competitive bidding and central contracts as mandated by law. In the case of mandated use of these facilities, this agency adopts the applicable Standard Procurement rules promulgated by the Department of Central Management Services (44 Ill. Adm. Code 1) as now or hereafter constituted.
- c) Agreements regarding the lease or rental of Electronic Data Processing equipment, software and services may be entered into by the Director of the Legislative Information System.
- d) Agreements regarding the lease-purchase or installment purchase of Electronic Data Processing, duplicating and telecommunications equipment may be entered into by the Director only after the approval of the System.
- e) Procurement of telecommunications services for the operation of the agency shall be the responsibility of the Director. Services shall be procured on the basis of economy within the needs of the agency.
- f) The Director may utilize the central purchasing facilities of the Department of Central Management Services in situations not mandated by law whenever the use of the facilities will result in timely, economical and efficient procurement of goods and services and the use of such facilities has been approved by the Director of the Department of Central Management Services. When such facilities are utilized, the Standard Procurement rules promulgated by the Department of Central Management Services (44 Ill. Adm. Code 1) shall govern the procurement of goods and services.
- g) In the acquisition of services not elsewhere provided for in the Standard Procurement rules of the Department of Central Management Services (44 Ill. Adm. Code 1), this agency will enter into service agreements in accordance with the Illinois Purchasing Act.

**Section 575.30 Right of Rejection**

The Legislative Information System reserves the right to reject for cause any and all bids, offers or proposals received by it with respect to any invitation to bid or request for proposal issued by the Legislative Information System or withdraw any invitation to bid or request for proposal prior to awarding the bid or contract.

**Section 575.40 Governing Provisions**

This Part is subject to the provisions of the Illinois Purchasing Act and all other applicable laws of the State of Illinois.

## DEPARTMENT OF PROFESSIONAL REGULATION

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Illinois Professional Land Surveyor Act of 1989
- 2) Code Citation: 68 Ill. Adm. Code 1270
- 3) 

<u>Section Numbers:</u>	<u>Proposed Action:</u>
1270.5	Amendment
1270.10	Amendment
1270.13	Amendment
1270.15	Amendment
1270.20	Amendment
1270.30	Amendment
1270.40	Amendment
1270.45	Amendment
1270.50	Amendment
1270.55	Amendment
1270.58	New Section
- 4) Statutory Authority: The Illinois Professional Land Surveyor Act of 1989 [225 ILCS 330].
- 5) A Complete Description of the Subjects and Issues Involved: Public Act 91-132, effective January 1, 2000, is the sunset reauthorization of the Illinois Professional Land Surveyor Act of 1989. Reflecting this reauthorization, this proposed rulemaking removes obsolete language concerning educational requirements and adds language concerning seals to reflect the Act. Other technical and cleanup changes are also included.
- 6) Will these proposed amendments replace emergency amendments currently in effect? NO
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Do these proposed amendments contain incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part? Yes
- 10) 

<u>Section Numbers</u>	<u>Proposed Action</u>	<u>Illinois Register Citation</u>
1270.56	New Section	24 Ill. Reg. 12391
1270.57	New Section	24 Ill. Reg. 12391

Statement of Statewide Policy Objectives (if applicable): This rulemaking has no impact on local governments.
- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may submit written comments to:
- Department of Professional Regulation  
Attention: Jean A. Courtney



## DEPARTMENT OF PROFESSIONAL REGULATION

## NOTICE OF PROPOSED AMENDMENTS

320 West Washington, 3rd Floor  
Springfield IL 62786  
217/785-0813

All written comments received within 45 days of this issue of the *Illinois Register* will be considered.

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: Those providing the services of land surveyors.

B) Reporting, bookkeeping or other procedures required for compliance:  
None

C) Types of professional skills necessary for compliance: Land surveying skills are required for licensure.

13) Regulatory Agenda on which this rulemaking was summarized: January 2000

The full text of the Proposed Amendments begins on the next page:

## DEPARTMENT OF PROFESSIONAL REGULATION

## NOTICE OF PROPOSED AMENDMENTS

TITLE 68: PROFESSIONS AND OCCUPATIONS  
CHAPTER VII: DEPARTMENT OF PROFESSIONAL REGULATION  
SUBCHAPTER b: PROFESSIONS AND OCCUPATIONS

## PART 1270

## ILLINOIS PROFESSIONAL LAND SURVEYOR ACT OF 1989

Section 1270.5	Application for Licensure as a Professional Land Surveyor-in-Training by Examination
1270.10	Application for Licensure as a Professional Land Surveyor by Examination
1270.13	Experience
1270.15	Definition of Related Science
1270.20	Examinations
1270.30	Endorsement
1270.35	Inactive Status
1270.40	Restoration
1270.45	Professional Design Firm
1270.50	Renewals
1270.52	Fees
1270.55	Land Surveyor Complaint Committee
1270.58	Seal Requirements
1270.60	Granting Variances

## APPENDIX A

Rules for the Perpetuation of Monuments Under the Land Survey Monuments Act

**AUTHORITY:** Implementing the Illinois Professional Land Surveyor Act of 1989 [225 ILCS 330] and authorized by Section 2105-15(7) of the Civil Administrative Code of Illinois [20 ILCS 2105-15(7)].

**SOURCE:** Rules and Regulations Promulgated for the Administration of the Illinois Land Surveyors Act, effective April 27, 1967; 2 Ill. Reg. No. 50, page 64, effective December 11, 1978; codified and amended at 5 Ill. Reg. 11039; 5 Ill. Reg. 14171, effective December 3, 1981; emergency amendment at 6 Ill. Reg. 916, effective January 6, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 7448, effective June 15, 1982; emergency amendment at 8 Ill. Reg. 5365, effective April 12, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 15485, effective August 10, 1984; amended at 11 Ill. Reg. 1615, effective January 6, 1987; amended at 11 Ill. Reg. 4763, effective March 10, 1987; recodified from Chapter I, 68 Ill. Adm. Code 270 (Department of Registration and Education) to Chapter VII, 68 Ill. Adm. Code 1270 (Department of Professional Regulation) pursuant to P.A. 85-225, effective January 1, 1988, at 12 Ill. Reg. 2950; amended at 15 Ill. Reg. 5258, effective April 2, 1991; amended at 16 Ill. Reg. 15548, effective September 28, 1992; amended at 18 Ill. Reg. 5900, effective April 5, 1994; amended at 18 Ill. Reg. 14730, effective September 19, 1994; amended at 19 Ill. Reg. 16071, effective November 17, 1995;

## DEPARTMENT OF PROFESSIONAL REGULATION

## NOTICE OF PROPOSED AMENDMENTS

amended at 20 Ill. Reg. 5852, effective April 3, 1996; amended at 21 Ill. Reg. 14252, effective October 15, 1997; amended at 24 Ill. Reg. 576, effective December 31, 1999; amended at 24 Ill. Reg. 13719, effective August 28, 2000; amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

### Section 1270.5 Application for Licensure as a Professional Land Surveyor-in-Training by Examination

a) An applicant for licensure as a Professional Land Surveyor-in-Training under the Illinois Professional Land Surveyor Act of 1989 (the Act) [225 ILCS 330] shall file an application, on forms supplied by the Department of Professional Regulation (the Department), by November 15 for the spring examination and May 15 for the fall examination. The application shall include the following:

a1) Certification of education, completed by the educational institution attended, and/or experience verified by the employer from for one of the following:

- 1A) A baccalaureate degree in land surveying from an accredited college or university; or
- 2B) A baccalaureate degree from an accredited college or university in a related science, as defined in Section 1270.15, including 24 semester hours of land surveying courses.

b2) A complete work history indicating all employment since fulfillment of the educational requirements set forth in subsection (a)(1) above, if applicable.

3) Certification, on forms provided by the Department, from the state or territory of the United States in which the applicant was originally licensed and the state in which the applicant predominantly practices and is currently licensed, if applicable stating:

A) The time during which the applicant was licensed in that jurisdiction, including the date of the original issuance of the license;

B) A description of the examination in that jurisdiction; and

C) Whether the file on the applicant contains any record of disciplinary actions taken or pending.

c4) The required fee specified in Section 1270.52 of this Part

d5) Proof of passage of the Test of English as a Foreign Language (TOEFL) with a minimum score of 550 or 213 on the computer-based test and the Test of Spoken English (TSE) with a minimum score of 50, for applicants who apply after January 1, 1997, who graduated from a land surveyor program outside the United States or its territories and whose first language is not English. In order to determine applicants whose first language is English, the applicant shall submit verification from the school that the land surveyor program from which the applicant graduated was taught in English.

e6) Applicants who received their education in a foreign country shall have the education evaluated at their expense. Applicants shall obtain the forms from the National Council of Examiners for Engineers

## DEPARTMENT OF PROFESSIONAL REGULATION

## NOTICE OF PROPOSED AMENDMENTS

(NCES), P.O. Box 1686, Clemson, South Carolina 29633-1686 or other evaluator approved by the Board. The Land Surveyors Licensing Board (the Board) will review all transcripts and the evaluation submitted to the Department to determine if the education meets the requirements set forth in this Section and Section 1270.15.

b) Beginning January 1, 1998, an applicant shall have a baccalaureate degree in land surveying from an accredited college or university, or a baccalaureate degree in a related science including at least 24 semester hours of land surveying courses from a Board-approved curriculum of an accredited institution (Section 13 of the Act).

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 1270.10 Application for Licensure as a Professional Land Surveyor by Examination

An applicant for licensure as a Professional Land Surveyor shall file an application, on forms supplied by the Department, by November 15 for the spring examination and May 15 for the fall examination. The application shall include the following:

a) Educational and experience requirements.

1) Applicants filing after January 1, 1986:

a1) Verification of education. Shall have met one of the educational and experience requirements set forth in Section 1270.5;

b1) Proof of holding shall have been issued a license as a Professional Land Surveyor-in-Training, and

C) Shall have completed at least 4 years of experience in land surveying approved in accordance with Section 1270.13(a);

passage of the Fundamentals of Land Surveying examination; practice of land surveying prior to January 1, 1987.

2) Applicants who have obtained 4 years of experience or more in the practice of land surveying prior to January 1, 1987:

A) Shall have met one of the educational and experience requirements set forth in Section 1270.5(a)(1); and

B) Shall have completed at least 4 years of approved experience in land surveying as set forth in Section 1270.13(a); (b) (1) and (d) (1). Applicants shall be permitted to continue acquiring experience without being issued a Professional Land Surveyor-in-Training license.

c) Certification, on forms provided by the Department, from the state or territory of the United States in which the applicant was originally licensed as a Surveyor-in-Training and/or Land Surveyor and the state in which the applicant predominantly practices and is currently licensed, if applicable, stating:

1) The time during which the applicant was licensed in that jurisdiction, including the date of the original issuance of the license;



## DEPARTMENT OF PROFESSIONAL REGULATION

## NOTICE OF PROPOSED AMENDMENTS

- 2) A description of the examination in that jurisdiction; and
- 3) Whether the file on the applicant contains any record of disciplinary actions taken or pending.
- de) Verification of experience form, completed by the supervisor who is a licensed land surveyor employer, indicating at least the--required 4 years of responsible charge approved experience in land surveying as set forth in Section 1270.13(a)-(b)-(c)-(d)-(e)-(f)-(g)-(h)-(i)-(j)-(k)-(l)-(m)-(n)-(o)-(p)-(q)-(r)-(s)-(t)-(u)-(v)-(w)-(x)-(y)-(z)-(aa)-(ab)-(ac)-(ad)-(ae)-(af)-(ag)-(ah)-(ai)-(aj)-(ak)-(al)-(am)-(an)-(ao)-(ap)-(aq)-(ar)-(as)-(at)-(au)-(av)-(aw)-(ax)-(ay)-(az)-(ba)-(bb)-(bc)-(bd)-(be)-(bf)-(bg)-(bh)-(bi)-(bj)-(bk)-(bl)-(bm)-(bn)-(bo)-(bp)-(bq)-(br)-(bs)-(bt)-(bu)-(bv)-(bw)-(bx)-(by)-(bz)-(ca)-(cb)-(cc)-(cd)-(ce)-(cf)-(cg)-(ch)-(ci)-(cj)-(ck)-(cl)-(cm)-(cn)-(co)-(cp)-(cq)-(cr)-(cs)-(ct)-(cu)-(cv)-(cw)-(cx)-(cy)-(cz)-(da)-(db)-(dc)-(dd)-(de)-(df)-(dg)-(dh)-(di)-(dj)-(dk)-(dl)-(dm)-(dn)-(do)-(dp)-(dq)-(dr)-(ds)-(dt)-(du)-(dv)-(dw)-(dx)-(dy)-(dz)-(ea)-(eb)-(ec)-(ed)-(ee)-(ef)-(eg)-(eh)-(ei)-(ej)-(ek)-(el)-(em)-(en)-(eo)-(ep)-(eq)-(er)-(es)-(et)-(eu)-(ev)-(ew)-(ex)-(ey)-(ez)-(fa)-(fb)-(fc)-(fd)-(fe)-(ff)-(fg)-(fh)-(fi)-(fj)-(fk)-(fl)-(fm)-(fn)-(fo)-(fp)-(fq)-(fr)-(fs)-(ft)-(fu)-(fv)-(fw)-(fx)-(fy)-(fz)-(ga)-(gb)-(gc)-(gd)-(ge)-(gf)-(gg)-(gh)-(gi)-(gj)-(gk)-(gl)-(gm)-(gn)-(go)-(gp)-(gq)-(gr)-(gs)-(gt)-(gu)-(gv)-(gw)-(gx)-(gy)-(gz)-(ha)-(hb)-(hc)-(hd)-(he)-(hf)-(hg)-(hh)-(hi)-(hj)-(hk)-(hl)-(hm)-(hn)-(ho)-(hp)-(hq)-(hr)-(hs)-(ht)-(hu)-(hv)-(hw)-(hx)-(hy)-(hz)-(ia)-(ib)-(ic)-(id)-(ie)-(if)-(ig)-(ih)-(ii)-(ij)-(ik)-(il)-(im)-(in)-(io)-(ip)-(iq)-(ir)-(is)-(it)-(iu)-(iv)-(iw)-(ix)-(iy)-(iz)-(ja)-(jb)-(jc)-(jd)-(je)-(jf)-(jg)-(jh)-(ji)-(jj)-(jk)-(jl)-(jm)-(jn)-(jo)-(jp)-(jq)-(jr)-(js)-(jt)-(ju)-(jv)-(jw)-(jx)-(jy)-(jz)-(ka)-(kb)-(kc)-(kd)-(ke)-(kf)-(kg)-(kh)-(ki)-(kj)-(kk)-(kl)-(km)-(kn)-(ko)-(kp)-(kq)-(kr)-(ks)-(kt)-(ku)-(kv)-(kw)-(kx)-(ky)-(kz)-(la)-(lb)-(lc)-(ld)-(le)-(lf)-(lg)-(lh)-(li)-(lj)-(lk)-(ll)-(lm)-(ln)-(lo)-(lp)-(lq)-(lr)-(ls)-(lt)-(lu)-(lv)-(lw)-(lx)-(ly)-(lz)-(ma)-(mb)-(mc)-(md)-(me)-(mf)-(mg)-(mh)-(mi)-(mj)-(mk)-(ml)-(mm)-(mn)-(mo)-(mp)-(mq)-(mr)-(ms)-(mt)-(mu)-(mv)-(mw)-(mx)-(my)-(mz)-(na)-(nb)-(nc)-(nd)-(ne)-(nf)-(ng)-(nh)-(ni)-(nj)-(nk)-(nl)-(nm)-(no)-(np)-(nq)-(nr)-(ns)-(nt)-(nu)-(nv)-(nw)-(nx)-(ny)-(nz)-(oa)-(ob)-(oc)-(od)-(oe)-(of)-(og)-(oh)-(oi)-(oj)-(ok)-(ol)-(om)-(on)-(oo)-(op)-(oq)-(or)-(os)-(ot)-(ou)-(ov)-(ow)-(ox)-(oy)-(oz)-(pa)-(pb)-(pc)-(pd)-(pe)-(pf)-(pg)-(ph)-(pi)-(pj)-(pk)-(pl)-(pm)-(pn)-(po)-(pp)-(pq)-(pr)-(ps)-(pt)-(pu)-(pv)-(pw)-(px)-(py)-(pz)-(qa)-(qb)-(qc)-(qd)-(qe)-(qf)-(qg)-(qh)-(qi)-(qj)-(qk)-(ql)-(qm)-(qn)-(qo)-(qp)-(qq)-(qr)-(qs)-(qt)-(qu)-(qv)-(qw)-(qx)-(qy)-(qz)-(ra)-(rb)-(rc)-(rd)-(re)-(rf)-(rg)-(rh)-(ri)-(rj)-(rk)-(rl)-(rm)-(rn)-(ro)-(rp)-(rq)-(rr)-(rs)-(rt)-(ru)-(rv)-(rw)-(rx)-(ry)-(rz)-(sa)-(sb)-(sc)-(sd)-(se)-(sf)-(sg)-(sh)-(si)-(sj)-(sk)-(sl)-(sm)-(sn)-(so)-(sp)-(sq)-(sr)-(ss)-(st)-(su)-(sv)-(sw)-(sx)-(sy)-(sz)-(ta)-(tb)-(tc)-(td)-(te)-(tf)-(tg)-(th)-(ti)-(tj)-(tk)-(tl)-(tm)-(tn)-(to)-(tp)-(tq)-(tr)-(ts)-(tt)-(tu)-(tv)-(tw)-(tx)-(ty)-(tz)-(ua)-(ub)-(uc)-(ud)-(ue)-(uf)-(ug)-(uh)-(ui)-(uj)-(uk)-(ul)-(um)-(un)-(uo)-(up)-(uq)-(ur)-(us)-(ut)-(uu)-(uv)-(uw)-(ux)-(uy)-(uz)-(va)-(vb)-(vc)-(vd)-(ve)-(vf)-(vg)-(vh)-(vi)-(vj)-(vk)-(vl)-(vm)-(vn)-(vo)-(vp)-(vq)-(vr)-(vs)-(vt)-(vu)-(vv)-(vw)-(vx)-(vy)-(vz)-(wa)-(wb)-(wc)-(wd)-(we)-(wf)-(wg)-(wh)-(wi)-(wj)-(wk)-(wl)-(wm)-(wn)-(wo)-(wp)-(wq)-(wr)-(ws)-(wt)-(wu)-(wv)-(ww)-(wx)-(wy)-(wz)-(xa)-(xb)-(xc)-(xd)-(xe)-(xf)-(xg)-(xh)-(xi)-(xj)-(xk)-(xl)-(xm)-(xn)-(xo)-(xp)-(xq)-(xr)-(xs)-(xt)-(xu)-(xv)-(xw)-(xx)-(xy)-(xz)-(ya)-(yb)-(yc)-(yd)-(ye)-(yf)-(yg)-(yh)-(yi)-(yj)-(yk)-(yl)-(ym)-(yn)-(yo)-(yp)-(yq)-(yr)-(ys)-(yt)-(yu)-(yv)-(yw)-(yx)-(yy)-(yz)-(za)-(zb)-(zc)-(zd)-(ze)-(zf)-(zg)-(zh)-(zi)-(zj)-(zk)-(zl)-(zm)-(zn)-(zo)-(zp)-(zq)-(zr)-(zs)-(zt)-(zu)-(zv)-(zw)-(zx)-(zy)-(zz)

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1270.13 Experience

The experience requirements set forth in Section 1270.5 and 1270.10 shall meet the criteria described below.

- a) Credit shall be given for actual experience in the practice of land surveying as defined in Section 5 of the Act.
- b) Such experience shall be under the direct supervision and control of a professional land surveyor in responsible charge of land surveying operations. Direct supervision and control means the personal review by a licensed professional land surveyor of each survey, including, but not limited to, procurement, research, field work, calculations, preparation of legal descriptions and plats. The personal review shall be of such a nature as to assure the client that the professional land surveyor or the firm for which the professional land surveyor is employed is the provider of the surveying services. (Section 4 of the Act) as defined in Section 4(d) of the Act.
- c) In addition to the above requirements, the four years of experience

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set forth in Section 1270.10(a)-(b)-(c)-(d)-(e)-(f)-(g)-(h)-(i)-(j)-(k)-(l)-(m)-(n)-(o)-(p)-(q)-(r)-(s)-(t)-(u)-(v)-(w)-(x)-(y)-(z)-(aa)-(ab)-(ac)-(ad)-(ae)-(af)-(ag)-(ah)-(ai)-(aj)-(ak)-(al)-(am)-(an)-(ao)-(ap)-(aq)-(ar)-(as)-(at)-(au)-(av)-(aw)-(ax)-(ay)-(az)-(ba)-(bb)-(bc)-(bd)-(be)-(bf)-(bg)-(bh)-(bi)-(bj)-(bk)-(bl)-(bm)-(bn)-(bo)-(bp)-(bq)-(br)-(bs)-(bt)-(bu)-(bv)-(bw)-(bx)-(by)-(bz)-(ca)-(cb)-(cc)-(cd)-(ce)-(cf)-(cg)-(ch)-(ci)-(cj)-(ck)-(cl)-(cm)-(cn)-(co)-(cp)-(cq)-(cr)-(cs)-(ct)-(cu)-(cv)-(cw)-(cx)-(cy)-(cz)-(da)-(db)-(dc)-(dd)-(de)-(df)-(dg)-(dh)-(di)-(dj)-(dk)-(dl)-(dm)-(dn)-(do)-(dp)-(dq)-(dr)-(ds)-(dt)-(du)-(dv)-(dw)-(dx)-(dy)-(dz)-(ea)-(eb)-(ec)-(ed)-(ee)-(ef)-(eg)-(eh)-(ei)-(ej)-(ek)-(el)-(em)-(en)-(eo)-(ep)-(eq)-(er)-(es)-(et)-(eu)-(ev)-(ew)-(ex)-(ey)-(ez)-(fa)-(fb)-(fc)-(fd)-(fe)-(ff)-(fg)-(fh)-(fi)-(fj)-(fk)-(fl)-(fm)-(fn)-(fo)-(fp)-(fq)-(fr)-(fs)-(ft)-(fu)-(fv)-(fw)-(fx)-(fy)-(fz)-(ga)-(gb)-(gc)-(gd)-(ge)-(gf)-(gg)-(gh)-(gi)-(gj)-(gk)-(gl)-(gm)-(gn)-(go)-(gp)-(gq)-(gr)-(gs)-(gt)-(gu)-(gv)-(gw)-(gx)-(gy)-(gz)-(ha)-(hb)-(hc)-(hd)-(he)-(hf)-(hg)-(hh)-(hi)-(hj)-(hk)-(hl)-(hm)-(hn)-(ho)-(hp)-(hq)-(hr)-(hs)-(ht)-(hu)-(hv)-(hw)-(hx)-(hy)-(hz)-(ia)-(ib)-(ic)-(id)-(ie)-(if)-(ig)-(ih)-(ii)-(ij)-(ik)-(il)-(im)-(in)-(io)-(ip)-(iq)-(ir)-(is)-(it)-(iu)-(iv)-(iw)-(ix)-(iy)-(iz)-(ja)-(jb)-(jc)-(jd)-(je)-(jf)-(jg)-(jh)-(ji)-(jj)-(jk)-(jl)-(jm)-(jn)-(jo)-(jp)-(jq)-(jr)-(js)-(jt)-(ju)-(jv)-(jw)-(jx)-(jy)-(jz)-(ka)-(kb)-(kc)-(kd)-(ke)-(kf)-(kg)-(kh)-(ki)-(kj)-(kk)-(kl)-(km)-(kn)-(ko)-(kp)-(kq)-(kr)-(ks)-(kt)-(ku)-(kv)-(kw)-(kx)-(ky)-(kz)-(la)-(lb)-(lc)-(ld)-(le)-(lf)-(lg)-(lh)-(li)-(lj)-(lk)-(ll)-(lm)-(ln)-(lo)-(lp)-(lq)-(lr)-(ls)-(lt)-(lu)-(lv)-(lw)-(lx)-(ly)-(lz)-(ma)-(mb)-(mc)-(md)-(me)-(mf)-(mg)-(mh)-(mi)-(mj)-(mk)-(ml)-(mm)-(mn)-(mo)-(mp)-(mq)-(mr)-(ms)-(mt)-(mu)-(mv)-(mw)-(mx)-(my)-(mz)-(na)-(nb)-(nc)-(nd)-(ne)-(nf)-(ng)-(nh)-(ni)-(nj)-(nk)-(nl)-(nm)-(no)-(np)-(nq)-(nr)-(ns)-(nt)-(nu)-(nv)-(nw)-(nx)-(ny)-(nz)-(oa)-(ob)-(oc)-(od)-(oe)-(of)-(og)-(oh)-(oi)-(oj)-(ok)-(ol)-(om)-(on)-(oo)-(op)-(oq)-(or)-(os)-(ot)-(ou)-(ov)-(ow)-(ox)-(oy)-(oz)-(pa)-(pb)-(pc)-(pd)-(pe)-(pf)-(pg)-(ph)-(pi)-(pj)-(pk)-(pl)-(pm)-(pn)-(po)-(pp)-(pq)-(pr)-(ps)-(pt)-(pu)-(pv)-(pw)-(px)-(py)-(pz)-(qa)-(qb)-(qc)-(qd)-(qe)-(qf)-(qg)-(qh)-(qi)-(qj)-(qk)-(ql)-(qm)-(qn)-(qo)-(qp)-(qq)-(qr)-(qs)-(qt)-(qu)-(qv)-(qw)-(qx)-(qy)-(qz)-(ra)-(rb)-(rc)-(rd)-(re)-(rf)-(rg)-(rh)-(ri)-(rj)-(rk)-(rl)-(rm)-(rn)-(ro)-(rp)-(rq)-(rr)-(rs)-(rt)-(ru)-(rv)-(rw)-(rx)-(ry)-(rz)-(sa)-(sb)-(sc)-(sd)-(se)-(sf)-(sg)-(sh)-(si)-(sj)-(sk)-(sl)-(sm)-(sn)-(so)-(sp)-(sq)-(sr)-(ss)-(st)-(su)-(sv)-(sw)-(sx)-(sy)-(sz)-(ta)-(tb)-(tc)-(td)-(te)-(tf)-(tg)-(th)-(ti)-(tj)-(tk)-(tl)-(tm)-(tn)-(to)-(tp)-(tq)-(tr)-(ts)-(tt)-(tu)-(tv)-(tw)-(tx)-(ty)-(tz)-(ua)-(ub)-(uc)-(ud)-(ue)-(uf)-(ug)-(uh)-(ui)-(uj)-(uk)-(ul)-(um)-(un)-(uo)-(up)-(uq)-(ur)-(us)-(ut)-(uu)-(uv)-(uw)-(ux)-(uy)-(uz)-(va)-(vb)-(vc)-(vd)-(ve)-(vf)-(vg)-(vh)-(vi)-(vj)-(vk)-(vl)-(vm)-(vn)-(vo)-(vp)-(vq)-(vr)-(vs)-(vt)-(vu)-(vv)-(vw)-(vx)-(vy)-(vz)-(wa)-(wb)-(wc)-(wd)-(we)-(wf)-(wg)-(wh)-(wi)-(wj)-(wk)-(wl)-(wm)-(wn)-(wo)-(wp)-(wq)-(wr)-(ws)-(wt)-(wu)-(wv)-(ww)-(wx)-(wy)-(wz)-(xa)-(xb)-(xc)-(xd)-(xe)-(xf)-(xg)-(xh)-(xi)-(xj)-(xk)-(xl)-(xm)-(xn)-(xo)-(xp)-(xq)-(xr)-(xs)-(xt)-(xu)-(xv)-(xw)-(xx)-(xy)-(xz)-(ya)-(yb)-(yc)-(yd)-(ye)-(yf)-(yg)-(yh)-(yi)-(yj)-(yk)-(yl)-(ym)-(yn)-(yo)-(yp)-(yq)-(yr)-(ys)-(yt)-(yu)-(yv)-(yw)-(yx)-(yy)-(yz)-(za)-(zb)-(zc)-(zd)-(ze)-(zf)-(zg)-(zh)-(zi)-(zj)-(zk)-(zl)-(zm)-(zn)-(zo)-(zp)-(zq)-(zr)-(zs)-(zt)-(zu)-(zv)-(zw)-(zx)-(zy)-(zz)

cd) Experience shall be in areas of land surveying practice designated in this subsection (c) in subsections (d)-(e)-(f)-(g)-(h)-(i)-(j)-(k)-(l)-(m)-(n)-(o)-(p)-(q)-(r)-(s)-(t)-(u)-(v)-(w)-(x)-(y)-(z)-(aa)-(ab)-(ac)-(ad)-(ae)-(af)-(ag)-(ah)-(ai)-(aj)-(ak)-(al)-(am)-(an)-(ao)-(ap)-(aq)-(ar)-(as)-(at)-(au)-(av)-(aw)-(ax)-(ay)-(az)-(ba)-(bb)-(bc)-(bd)-(be)-(bf)-(bg)-(bh)-(bi)-(bj)-(bk)-(bl)-(bm)-(bn)-(bo)-(bp)-(bq)-(br)-(bs)-(bt)-(bu)-(bv)-(bw)-(bx)-(by)-(bz)-(ca)-(cb)-(cc)-(cd)-(ce)-(cf)-(cg)-(ch)-(ci)-(cj)-(ck)-(cl)-(cm)-(cn)-(co)-(cp)-(cq)-(cr)-(cs)-(ct)-(cu)-(cv)-(cw)-(cx)-(cy)-(cz)-(da)-(db)-(dc)-(dd)-(de)-(df)-(dg)-(dh)-(di)-(dj)-(dk)-(dl)-(dm)-(dn)-(do)-(dp)-(dq)-(dr)-(ds)-(dt)-(du)-(dv)-(dw)-(dx)-(dy)-(dz)-(ea)-(eb)-(ec)-(ed)-(ee)-(ef)-(eg)-(eh)-(ei)-(ej)-(ek)-(el)-(em)-(en)-(eo)-(ep)-(eq)-(er)-(es)-(et)-(eu)-(ev)-(ew)-(ex)-(ey)-(ez)-(fa)-(fb)-(fc)-(fd)-(fe)-(ff)-(fg)-(fh)-(fi)-(fj)-(fk)-(fl)-(fm)-(fn)-(fo)-(fp)-(fq)-(fr)-(fs)-(ft)-(fu)-(fv)-(fw)-(fx)-(fy)-(fz)-(ga)-(gb)-(gc)-(gd)-(ge)-(gf)-(gg)-(gh)-(gi)-(gj)-(gk)-(gl)-(gm)-(gn)-(go)-(gp)-(gq)-(gr)-(gs)-(gt)-(gu)-(gv)-(gw)-(gx)-(gy)-(gz)-(ha)-(hb)-(hc)-(hd)-(he)-(hf)-(hg)-(hh)-(hi)-(hj)-(hk)-(hl)-(hm)-(hn)-(ho)-(hp)-(hq)-(hr)-(hs)-(ht)-(hu)-(hv)-(hw)-(hx)-(hy)-(hz)-(ia)-(ib)-(ic)-(id)-(ie)-(if)-(ig)-(ih)-(ii)-(ij)-(ik)-(il)-(im)-(in)-(io)-(ip)-(iq)-(ir)-(is)-(it)-(iu)-(iv)-(iw)-(ix)-(iy)-(iz)-(ja)-(jb)-(jc)-(jd)-(je)-(jf)-(jg)-(jh)-(ji)-(jj)-(jk)-(jl)-(jm)-(jn)-(jo)-(jp)-(jq)-(jr)-(js)-(jt)-(ju)-(jv)-(jw)-(jx)-(jy)-(jz)-(ka)-(kb)-(kc)-(kd)-(ke)-(kf)-(kg)-(kh)-(ki)-(kj)-(kk)-(kl)-(km)-(kn)-(ko)-(kp)-(kq)-(kr)-(ks)-(kt)-(ku)-(kv)-(kw)-(kx)-(ky)-(kz)-(la)-(lb)-(lc)-(ld)-(le)-(lf)-(lg)-(lh)-(li)-(lj)-(lk)-(ll)-(lm)-(ln)-(lo)-(lp)-(lq)-(lr)-(ls)-(lt)-(lu)-(lv)-(lw)-(lx)-(ly)-(lz)-(ma)-(mb)-(mc)-(md)-(me)-(mf)-(mg)-(mh)-(mi)-(mj)-(mk)-(ml)-(mm)-(mn)-(mo)-(mp)-(mq)-(mr)-(ms)-(mt)-(mu)-(mv)-(mw)-(mx)-(my)-(mz)-(na)-(nb)-(nc)-(nd)-(ne)-(nf)-(ng)-(nh)-(ni)-(nj)-(nk)-(nl)-(nm)-(no)-(np)-(nq)-(nr)-(ns)-(nt)-(nu)-(nv)-(nw)-(nx)-(ny)-(nz)-(oa)-(ob)-(oc)-(od)-(oe)-(of)-(og)-(oh)-(oi)-(oj)-(ok)-(ol)-(om)-(on)-(oo)-(op)-(oq)-(or)-(os)-(ot)-(ou)-(ov)-(ow)-(ox)-(oy)-(oz)-(pa)-(pb)-(pc)-(pd)-(pe)-(pf)-(pg)-(ph)-(pi)-(pj)-(pk)-(pl)-(pm)-(pn)-(po)-(pp)-(pq)-(pr)-(ps)-(pt)-(pu)-(pv)-(pw)-(px)-(py)-(pz)-(qa)-(qb)-(qc)-(qd)-(qe)-(qf)-(qg)-(qh)-(qi)-(qj)-(qk)-(ql)-(qm)-(qn)-(qo)-(qp)-(qq)-(qr)-(qs)-(qt)-(qu)-(qv)-(qw)-(qx)-(qy)-(qz)-(ra)-(rb)-(rc)-(rd)-(re)-(rf)-(rg)-(rh)-(ri)-(rj)-(rk)-(rl)-(rm)-(rn)-(ro)-(rp)-(rq)-(rr)-(rs)-(rt)-(ru)-(rv)-(rw)-(rx)-(ry)-(rz)-(sa)-(sb)-(sc)-(sd)-(se)-(sf)-(sg)-(sh)-(si)-(sj)-(sk)-(sl)-(sm)-(sn)-(so)-(sp)-(sq)-(sr)-(ss)-(st)-(su)-(sv)-(sw)-(sx)-(sy)-(sz)-(ta)-(tb)-(tc)-(td)-(te)-(tf)-(tg)-(th)-(ti)-(tj)-(tk)-(tl)-(tm)-(tn)-(to)-(tp)-(tq)-(tr)-(ts)-(tt)-(tu)-(tv)-(tw)-(tx)-(ty)-(tz)-(ua)-(ub)-(uc)-(ud)-(ue)-(uf)-(ug)-(uh)-(ui)-(uj)-(uk)-(ul)-(um)-(un)-(uo)-(up)-(uq)-(ur)-(us)-(ut)-(uu)-(uv)-(uw)-(ux)-(uy)-(uz)-(va)-(vb)-(vc)-(vd)-(ve)-(vf)-(vg)-(vh)-(vi)-(vj)-(vk)-(vl)-(vm)-(vn)-(vo)-(vp)-(vq)-(vr)-(vs)-(vt)-(vu)-(vv)-(vw)-(vx)-(vy)-(vz)-(wa)-(wb)-(wc)-(wd)-(we)-(wf)-(wg)-(wh)-(wi)-(wj)-(wk)-(wl)-(wm)-(wn)-(wo)-(wp)-(wq)-(wr)-(ws)-(wt)-(wu)-(wv)-(ww)-(wx)-(wy)-(wz)-(xa)-(xb)-(xc)-(xd)-(xe)-(xf)-(xg)-(xh)-(xi)-(xj)-(xk)-(xl)-(xm)-(xn)-(xo)-(xp)-(xq)-(xr)-(xs)-(xt)-(xu)-(xv)-(xw)-(xx)-(xy)-(xz)-(ya)-(yb)-(yc)-(yd)-(ye)-(yf)-(yg)-(yh)-(yi)-(yj)-(yk)-(yl)-(ym)-(yn)-(yo)-(yp)-(yq)-(yr)-(ys)-(yt)-(yu)-(yv)-(yw)-(yx)-(yy)-(yz)-(za)-(zb)-(zc)-(zd)-(ze)-(zf)-(zg)-(zh)-(zi)-(zj)-(zk)-(zl)-(zm)-(zn)-(zo)-(zp)-(zq)-(zr)-(zs)-(zt)-(zu)-(zv)-(zw)-(zx)-(zy)-(zz)

1) All of a Professional Land Surveyor applicant's experience and at least two-thirds of a Surveyor-in-Training applicant's experience shall be acquired in the following:

1A) Locating land boundaries and land boundary corners, including the following services:

- A) Researching public and private records;
- B) Relocating lost or obliterated corners;
- C) Establishing, reestablishing or perpetuating survey monuments;

D) Subdividing sections;

E) Establishing or retracing property lines to determine length and bearing;

F) Reestablishing obliterated property lines;

G) Preparing descriptions of real property from data acquired by field measurements;

H) Conducting resurveys; and

I) Writing and interpreting land descriptions.

2B) Preparing maps, including:

- A) Maps of sections or portions of sections or townships as established by the original public land survey and subdivisions of those sections in accordance with the manuals of surveying instructions by the federal government and the State of Illinois;

B) Subdivision plats prepared in accordance with the Illinois Statutes or local ordinances;

C) Certified survey maps prepared in accordance with the Illinois Statutes or local ordinances;

D) Maps showing other divisions of land not controlled by statute or ordinance; and

E) Official plats or maps of land in this State.

2) Not more than one-third of a Surveyor-in-Training applicant's experience may be acquired in:

A) Bracing-highway-and-railroad-rights-of-way-plats;

B) Construction-staking-for-highways-roads-streets-or-similar projects-within-the-boundaries-of-established-rights-of-way;

C) Performing-topographic-surveys;

D) Developing-control-networks-for-aerial-photography-unless property-lines-are-used-for-control;-and

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- B) ~~Performing--new--building--layout--or--construction--surveys--or--other--design--related--surveys--~~

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1270.15 Definition of Related Science Sciences

a) A baccalaureate degree in a Related Science is a four-year curriculum that includes 24 hours of land surveying courses and core courses in at least the following subjects for the minimum semester hours or their equivalent:

- a1) Mathematics (College Algebra and beyond trigonometry) - 15 semester hours
- b2) Basic Sciences (Physics and/or Chemistry--Geology) - 8 semester 15 hours
- c3) Additional Basic Sciences (including but not limited to: Geology, Geography, Dendrology, Astronomy, Biology, Soil Mechanics, and engineering sciences) - 20 semester 15 hours
- b) ~~An associate degree in a Related Science is a two-year curriculum that includes--core--courses--in--at--least--the--following--subjects--for--the--minimum--semester--hours--or--their--equivalent--~~
  - i) Mathematics (beyond trigonometry)---3 hours
  - 2) Basic Sciences (Physics--Chemistry--Geology)---4 hours
  - 3) Additional Sciences---4 hours

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1270.20 Examinations

- a) An applicant for licensure as a Professional Land Surveyor-in-Training shall pass the National Council of Examiners for Engineering and Surveying (NCEES) Fundamentals of Land Surveying Examination.
- b) An applicant for licensure as a Professional Land Surveyor who is licensed as a Professional Land Surveyor-in-Training shall pass the following examinations:
  - 1) NCEES Principles and Practice of Land Surveying Examination; and
  - 2) Illinois Jurisdictional Examination.
- c) ~~An applicant--for--licensure--as--a--Professional--Land--Surveyor--who--originally--applied--prior--to--January--17--1986--who--is--not--licensed--as--a--Professional--Land--Surveyor--in--Training--shall--pass--the--following--examinations--~~
  - i) NCEES Fundamentals of Land Surveying Examination;
  - 2) NCEES Principles and Practice of Land Surveying Examination; and
  - 3) Illinois Jurisdictional Examination.
- d) ~~Any--applicant--for--licensure--as--a--Professional--Land--Surveyor--who--did--not--pass--the--NCEES--Public--Domain--examination--before--it--became--part--of--the--NCEES--Principles--and--Practice--of--Land--Surveying--Examination--~~

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~~effective May 17, 1992, shall be required to take and pass the--6-hour--principles--and--practice--of--land--surveying--examination--even--if--he/she--had--passed--the--4-hour--Principles--and--Practice--Examination--previously--administered--concurrently--with--the--Public--Domain--exam--~~

ce) The scoring of the NCEES Fundamentals of Land Surveying Examination and the NCEES Principles and Practice of Land Surveying Examination and the determination of scores shall be as approved by NCEES. Separate scores shall be given for each examination and the scores shall be reported as pass/fail.

d) The Illinois Jurisdictional Examination shall be reported as pass/fail. The Jurisdictional Examination shall include, but not be limited to, the following areas:

- 1) ~~Recent~~ History of the public land surveying system in Illinois;
- 2) Jurisdictional Standards and Ethics (knowledge of prevailing professional standards and ethics specific to Illinois);
- 3) Jurisdictional Legal Precedent and Principles (knowledge of legal principles and requirements specific to Illinois);
- 4) Jurisdictional Field Techniques (knowledge of field research techniques specific to Illinois); and
- 5) Jurisdictional Record Sources (knowledge of sources of records and information specific to Illinois).

g) ~~The Department shall not use any subject area scores from the parts of previous state constructed examinations for the purpose of deriving the required passing score for any examination required by this Section.~~

eh) Retake of examination.

- 1) Applicants who do not pass the NCEES Fundamentals of Land Surveying Examination, the NCEES Principles and Practice of Land Surveying Examination or the Illinois Jurisdictional Examination will be required to retake only the examinations ~~examinations~~ failed.

2) ~~If an applicant neglects, fails, or refuses to take an examination for registration under this Act within 3 years after filing his application, the application fee shall be forfeited to the Department and the application denied. However, the applicant may thereafter make a new application for examination, accompanied by the required fee. (Section 11 of the Act) New applications shall include proof of meeting the qualifications for examination in effect at the time of such new application with the exception provided in subsection (e)(3) below.~~

3) Scores from examinations already passed under a previous application shall be carried over and applied to subsequent applications.

ft) Candidates who fail an examination may not review their examination booklet or the associated answer sheets. Rescoring of the examination or any individual problem is not permitted; however, a retabulation of the numerical score will be permitted.



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(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 1270.30 Endorsement**

a) An applicant who is licensed or registered to practice Land Surveying as a Professional Land Surveyor or a Professional Land Surveyor-in-Training under the laws of another state or territory of the United States who desires to become licensed by endorsement shall file an application with the Department together with:

- 1) Proof that the applicant has met the requirements substantially equivalent to those in force in this state for a Licensed Professional Land Surveyor at the time of original or subsequent licensure by examination in the other state or territory, including certification of education, and verification of experience as appropriate;
- 2) A certification by the state or territory of original licensure and certification from the state or territory of predominant active practice, including the following:

A) The time during which the applicant was licensed in that state or territory, including the date of the original issuance of the license;

B) The basis of licensure and a description of all examinations by which the applicant was licensed in that state or territory and the date of passage of any such examinations; and

C) Whether the records of the licensing authority contain any record of disciplinary action taken or pending against the applicant;

3) A complete work history indicating all employment since fulfillment of educational requirements;

4) The required fee specified in Section 1270.52;

5) Applicants who received a license after January 1, 1997 and who received their education in a foreign country shall have the education evaluated at their expense. Applicants shall obtain the forms from the National Council of Examiners for Engineers (NCEES), P.O. Box 1686, Clemson, South Carolina 29633-1686. The Board will review all transcripts and the evaluation submitted to the Department to determine if the education meets the requirements set forth in this Section and Section 1270.15;

6) Proof of passage of the Test of English as a Foreign Language (TOEFL) with a minimum score of 550 or 213 on the computer-based test and the Test of Spoken English (TSE) with a minimum score of 50, for applicants who were licensed apply after January 1, 1997, who graduated from a land surveyor program outside the United States or its territories and whose first language is not English. In order to determine applicants whose first language is English, the applicant shall submit verification from the school

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that the land surveyor program from which the applicant graduated was taught in English.

b) An applicant for licensure under this Section shall be required to appear before the ~~Land-Surveyor-Examining~~ Board ~~{the--Board}~~ for an oral interview if the Department has questions about the applicant's application, because of discrepancies or conflicts in information, information needing further clarification and/or missing information.

c) Applicants for licensure on the basis of endorsement shall successfully complete the Illinois Jurisdictional Examination as set forth in Section 1270.20.

d) The Department shall examine each endorsement application to determine whether the requirements in the state or territory of original licensure were substantially equivalent to the requirements then in force in the State of Illinois. The Department shall either issue a license by endorsement to the applicant or notify the applicant in writing of the reason for the denial of such application.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 1270.40 Restoration**

a) A licensee seeking restoration of a license which has expired for less than 5 years shall have the license restored upon payment of \$20 plus all lapsed renewal fees specified by Section 1270.52.

b) A licensee seeking restoration of a license which has been placed on inactive status for less than 5 years shall have his license restored upon payment of the current renewal fee specified by Section 1270.52.

c) A licensee seeking restoration of a license after it has expired or been placed on inactive status for more than 5 years shall file an application, on forms supplied by the Department, for review by the Board, together with the fee specified by Section 1270.52. The licensee shall also submit:

1) Certification of active practice in another jurisdiction. Such certification shall include a statement from the appropriate board or licensing authority in the jurisdiction that the licensee was authorized to practice during the term of said active practice;

2) An affidavit attesting to military service as provided in Section 16 of the Act;

3) Proof of passage of the Illinois Jurisdictional Examination and/or the NCEES examination within one year after application; or

4) Other evidence of continued competence in land surveying. Other evidence shall include, but not be limited to:

- A) Employment in a responsible capacity by a licensed land surveyor as determined by the Board;
- B) Lawfully practicing land surveying as an employee of a

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governmental agency;

- C) Teaching land surveying in a college or university; or
  - D) Attendance at educational programs in land surveying.
- d) Any person restoring a license within 2 years after discharge from military service pursuant to Section 16 of the Act will be required to pay only the current renewal fee.
- e) When the accuracy of any submitted documentation, or the relevance or sufficiency of the course work or experience is questioned by the Department because of discrepancies or conflicts in information, information needing further clarification, or missing information, the licensee seeking restoration of his license shall be required to:
- 1) Provide such information as shall be necessary; and/or
  - 2) Explain such relevance or sufficiency during an oral interview; or
- f) Appear for an oral interview before the ~~Land-Surveyors--Examining Board~~ ~~(the "Board")~~, when the information available to the Board is insufficient to evaluate the individual's current competency to practice under the Act. Upon the recommendation of the Board, and approval by the Director, an applicant shall have his license restored or shall be notified in writing of the reason for the denial of such application for restoration.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1270.45 Professional Design Firm

- a) Persons who desire to practice land surveying in the State of Illinois in the form of a corporation, professional service corporation, partnership, limited liability company or limited liability partnership, or sole proprietorship (if the sole proprietorship is conducting or transacting business under an assumed name in accordance with the Assumed Business Name Act [805 ILCS 405]) pursuant to Section 25 of the Act, shall file an application with the Department on forms provided by the Department, together with the following:
  - 1) For Corporations or Professional Service Corporations. (Registration as a professional design firm shall meet the registration requirements of Section 12 of the Professional Service Corporation Act [805 ILCS 10/12]).
  - A) The name of the corporation and its registered address, the names of all members of the board of directors and officers, and the name of the state and license number for each director who is a licensed design professional.
  - B) A copy of the Articles of Incorporation bearing the seal of the office, in the jurisdiction in which the corporation is organized, whose duty it is to register corporations under the laws of that jurisdiction. If it is a foreign corporation, a copy of the certificate of authority to

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transact business in the State of Illinois issued by the Secretary of State is also required. The purpose clause of the Articles of Incorporation or the certificate of authority shall designate that the corporation is authorized to provide land surveying services. Each corporation shall remain active and in good standing with the Secretary of State in order to maintain a professional design ~~and surveying~~ firm registration.

- C) A signed and dated resolution of the board of directors of the corporation designating a regular full-time employee of the corporation who is an Illinois licensed land surveyor as the managing agent in charge of the land surveying activities in Illinois. The Illinois license number of the land surveyor designated as the managing agent shall also be included in the resolution.
  - D) A copy of the authority to transact business under the Assumed Business Name Act issued by the Secretary of State for any assumed names of the corporation, if applicable.
  - E) A certificate of good standing from the Secretary of State and a copy of the latest annual report, if applicable.
- 2) For Partnerships.

- A) General
  - i) A copy of the signed and dated partnership agreement authorizing the partnership to provide land surveying services. The partnership agreement shall contain the name of the partnership, its business address and the names of all partners. The name of the state in which each partner is licensed as a design professional and the license number shall be listed on the application.
  - ii) A signed and dated resolution adopted by the general partners designating a regular full-time employee of the partnership who is an Illinois licensed land surveyor as the managing agent in charge of the land surveying activities in this State. The Illinois license number of the land surveyor designated as the managing agent shall also be included in the resolution.
  - iii) A copy of the partnership documentation bearing the stamp of the county clerk where the partnership has been filed.
  - iv) A letter or certificate from the county clerk where an assumed name has been filed, if applicable.
- B) Limited Partnership
  - i) A copy of the signed and dated partnership agreement indicating that it has been filed with the Secretary of State authorizing the partnership to provide land surveying services. The partnership agreement shall contain the name of the partnership, its business



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address and the names of all partners. The name of the state in which each partner is licensed as a design professional and the license number shall be listed on the application.

ii) A signed and dated resolution adopted by the partners designating a full-time employee of the partnership who is an Illinois licensed land surveyor in this State as the managing agent in charge of land surveying activities. The Illinois license number of the land surveyor designated as the managing agent shall also be included in the resolution.

iii) A certificate of good standing from the Secretary of State and a copy of the latest annual report, if applicable.

iv) A copy of the authority to transact business under the Assumed Business Name Act issued by the Secretary of State for any assumed names of the partnership, if applicable.

3) For Limited Liability Companies or Limited Liability Partnerships.

A) An application containing the name of the limited liability company or partnership, the business address and the members/partners of the company/partnership, the name of the state and the license number of each member/partner licensed as a design professional.

B) A signed and dated resolution of the members or partners designating a full-time employee who is an Illinois licensed land surveyor as the managing agent in charge of the land surveying activities in this State. The Illinois license number of the managing agent shall also be included in the resolution.

C) A copy of the operating agreement or partnership agreement filed with the Secretary of State stating the company or partnership is authorized to offer land surveying services.

D) A certificate of good standing from the Secretary of State and a copy of the latest annual report, if applicable.

E) A copy of the authority to transact business under the Assumed Business Name Act issued by the Secretary of State for any assumed names of the limited liability company or partnership, if applicable.

4) For Sole Proprietorships with an Assumed Name.

A) An application containing the name of the sole proprietorship and its business address and the name and Illinois license number of the land surveyor who owns and operates the business.

B) A letter or certificate received from the county clerk where an assumed name has been filed.

5) A list of all office locations at which the corporation,

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professional service corporation, limited liability company/partnership, partnership or sole proprietorship provides land surveying services. Any professional services corporation, sole proprietorship, or professional design firm offering land surveying services must have a resident land surveyor overseeing the land surveying practices in each location in which land surveying services are provided. (Section 25(h) of the Act) A resident land surveyor is defined as an Illinois Licensed Land Surveyor who is physically present in the office supervising the professional land surveying operations a minimum of 40 hours a week or 80 percent of the hours the office is open, whichever is greater.

6) The fee required in Section 1270.52.

b) A professional design firm may designate more than one managing agent in charge of land surveying activities.

c) Upon receipt of the above documents and review of the application, the Department shall issue a registration authorizing the corporation, professional service corporation, limited liability company/partnership, partnership or sole proprietorship to engage in the practice of land surveying or notify the applicant in writing of the reason for the denial of the application.

d) Each corporation, professional service corporation, limited liability company/partnership, partnership or sole proprietorship with an assumed name shall be responsible for notifying the Department in writing within 30 days after any changes in:

1) The membership of the board of directors, members/partners of the limited liability company/partnership or the general partners;

2) The licensure status of any of the general partners, members/partners of the limited liability company/partnership or any of the licensed design professional members of the board of directors; and

3) An assumed name.

e) Each corporation, professional service corporation, limited liability company/partnership or partnership shall be responsible for notifying the Department in writing, by certified mail, within 10 business days after the termination or change in status of the managing agent. Thereafter, the corporation, professional service corporation, limited liability company/partnership or partnership, if it has so informed the Department, has 30 days to notify the Department of the name and license number of the land surveyor licensed in Illinois who is the newly designated managing agent.

f) Any failure to notify the Department as required in subsections (d) and (e) above or any failure of the corporation, professional service corporation, limited liability company/partnership or partnership to continue to comply with the requirements of Section 25 of the Act will subject the corporation, limited liability company/partnership or partnership to the loss of its registration to practice land surveying in Illinois.

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- g) Sole Proprietorships. Any sole proprietorship owned and operated by a land surveyor who has an active Illinois license is exempt from the registration requirement of a professional design firm. However, if the sole proprietorship operates under an assumed name, the sole proprietorship shall file an application in accordance with subsection (a)(4). Any sole proprietorship not owned and operated by an Illinois licensed land surveyor shall be prohibited from offering land surveying services to the public.
- h) In addition to the seal requirements in Section 15 of the Act, all documents or technical submissions prepared by the professional design firm ~~land-surveying~~ firm shall contain the professional design firm registration number issued by the Department.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1270.50 Renewals

- a) Every license as a Professional Land Surveyor issued under the Act shall expire on November 30 of each even numbered year. The holder of a license may renew such license during the month preceding the expiration date thereof by paying the fee specified in Section 1270.52.
- b) It is the responsibility of each licensee to notify the Department in writing of any change of address. Failure to receive a renewal form from the Department shall not constitute an excuse for failure to pay the renewal fee and to renew one's license.
- c) A license for a Land Surveyor-in-Training is valid for 10 years and may not be renewed (Section 18 of the Act).
- d) Every license issued to a professional design firm under the Act shall expire on April 30 of each odd numbered year. The holder of such license may renew that license for a 2-year period during the month preceding the expiration date thereof by paying the fee specified in Section 1270.52 and submitting an annual report or certificate of good standing from the Secretary of State.
- e) Practicing or offering to practice on a license which has expired or been placed on inactive status shall be considered unlicensed activity and shall be grounds for discipline pursuant to Section 27 of the Act.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1270.55 Land Surveyor Complaint Committee

- a) The Land Surveyor Complaint Committee of the Land Surveyors Licensing Examining Board authorized by Sections 8 and 29 of the Act shall be composed of 2 members of the Land Surveyors Licensing Examining Board, a Supervisor over Design Investigations and Chief of Prosecutions over

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- Design Prosecutions. The Director of Enforcement shall designate the Supervisor and Chief assigned to the Complaint Committee.
- b) The Complaint Committee shall meet at least once every 2 months to exercise its functions and duties set forth in subsection (c) below. The Complaint Committee may meet concurrently with the Complaint Committees of the Architecture Licensing Board, the State Board of Professional Engineers and the Structural Engineering Board to discuss interrelated professional matters. The Complaint Committee shall make every effort to consider expeditiously and take prompt action on each item on its agenda.
- c) The Complaint Committee shall have the following duties and functions:
- 1) To review investigative case files after an initial inquiry into the involved parties and their licensure status have been obtained. "Case file" means the allegation made against an involved party that resulted in a preliminary inquiry and other information being obtained in order to determine whether an investigation should be initiated or prosecution pursued. A "Formal Complaint" means the notice of allegations and charges or basis for licensure denial which begins the formal proceedings.
  - 2) To refer the case file to the Supervisor over the Design Investigators for further action. The Complaint Committee shall give the Supervisor an indication as to the prosecutorial merit and relative severity of the allegations to aid in the prioritization of investigative activity.
  - 3) To recommend that a case file be closed.
  - 4) To recommend that an Administrative Warning Letter be issued and the case file closed.
  - 5) To refer the case file to Prosecutions for review and action.
  - 6) To report the actions of the Complaint Committee at each Examining Board meeting and to present enforcement statistics such as the type of alleged violation.
- d) In determining what action to take or whether to proceed with investigation and prosecution of a case file, the Complaint Committee shall consider the following factors, but not be limited to: the effect on the public's health, safety and welfare; the sufficiency of the evidence presented; prosecutorial merit; and sufficient cooperation from complaining parties.
- e) At any time after referral to Prosecutions, the Department may enter into negotiations to resolve issues informally by way of a Consent Order. Factors to be considered in deciding whether to enter into settlement negotiations shall include, but not be limited to: the effect on the public's health, safety and welfare caused by the respondent's alleged conduct; sufficient investigation of the case; prosecutorial merit; relative severity of the respondent's alleged conduct; and past practices of the Department.
- f) No file shall be closed nor Formal Complaint dismissed except upon recommendation of the Complaint Committee and/or approval by the Land Surveyors Licensing Examining Board. Those case files that previously

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have been before the Board and are the subject of a Consent Order or Formal Order of the Director may be closed without further recommendation or approval of the Land Surveyors Licensing Examining Board or the Complaint Committee.

g) Disqualification of a Land Surveyors Licensing Examining Board member.

1) A Board member shall be recused from consideration of a case file or Formal Complaint when the Board member determines that a conflict of interest or prejudice would prevent that Board member from being fair and impartial.

2) Participation in the initial stages of the handling of a case file, including participation on the Complaint Committee and in informal conferences, shall not bar a Board member from future participation or decision making relating to that case file.

h) An informal conference is the procedure established by the Department that may be used for compliance review, fact finding, discussion of the issues, resolving case files, licensing issues or conflicts prior to initiating any Formal Complaint or formal hearing. An informal conference may only be conducted upon agreement of both parties. Informal conferences shall be conducted by a Department attorney and shall include a members membership of the Board. Board members shall be scheduled for informal conferences on a rotating basis.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 1270.58 Seal Requirements

Every individual professional land surveyor shall have a reproducible seal or facsimile, which may be computer generated, the impression of which shall contain the name of the land surveyor, his or her place of business, the license number of the professional land surveyor, and the words "professional land surveyor, State of Illinois". A professional land surveyor shall seal all documents prepared by or under the direct supervision and control of the professional land surveyor. Any seal on a plat of survey, which bears the name of a professional design firm, rather than bearing the name of the individual licensed professional land surveyor responsible for the survey, shall be deemed an invalid seal. The individual licensee's written signature and date of signing, along with the date of license expiration, shall be placed adjacent to the seal. Computer generated signatures will not be permitted.

(Source: Added at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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1) Heading of the Part: Professional Boxing and Wrestling Act

2) Code Citation: 68 Ill. Adm. Code 1370

3) Section Numbers: Proposed Action:

1370.10	Repealed
1370.15	New Section
1370.20	Amendment
1370.25	New Section
1370.26	New Section
1370.27	New Section
1370.28	New Section
1370.29	New Section
1370.30	Amendment
1370.40	Amendment
1370.50	Repealed
1370.60	Repealed
1370.70	Repealed
1370.80	Amendment
1370.90	Amendment
1370.100	Amendment
1370.105	New Section
1370.110	Amendment
1370.120	Amendment
1370.140	New Section
1370.160	New Section
1370.200	Amendment
1370.205	New Section
1370.206	New Section
1370.207	New Section
1370.210	Amendment
1370.220	Amendment
1370.230	Amendment
1370.260	Repealed
1370.270	Repealed
1370.290	Repealed
1370.300	Amendment
1370.310	Amendment
1370.320	Repealed
1370.325	Repealed
1370.330	Repealed
1370.340	Amendment
1370.350	Amendment
1370.360	Amendment
1370.370	Amendment

4) Statutory Authority: Professional Boxing and Wrestling Act [225 ILCS 105].



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1) A Complete Description of the Subjects and Issues Involved: PA 91-408 made numerous revisions in the Professional Boxing and Wrestling Act, clearly delineating who must be licensed or registered by the Department, including contestants, seconds, timekeepers, managers, matchmakers, judges, and referees. At the same time, the rules for administration of the Act have not been updated for some time. This proposed rulemaking is a complete update, overhaul and restructuring of the rules to reflect current practices and to conform with the statutes. Section 1370.40 revises and expands the number of weight divisions for boxers, while Section 1370.20(a) includes requiring a federal identification card for all boxers. Provisions are also made for women seeking licensure to box.

2) Will these proposed amendments replace emergency rulemakings currently in effect? No

3) Does this rulemaking contain an automatic repeal date? No

4) Do these proposed amendments contain incorporations by reference? No

5) Are there any other proposed amendments pending on this Part? No

10) Statement of Statewide Policy Objectives (if applicable): This rulemaking has no impact on local governments.

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this rulemaking may submit them in writing, by no later than 45 days after publication of this notice, to:

Department of Professional Regulation  
Attention: Jean A. Courtney  
320 West Washington, 3rd Floor  
Springfield IL 62786  
217/785-0813

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: Licensed boxing and wrestling promoters

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: July 2000

The full text of the Proposed Amendments begins on the next page:

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TITLE 68: PROFESSIONS AND OCCUPATIONS  
CHAPTER VII: DEPARTMENT OF PROFESSIONAL REGULATION  
SUBCHAPTER b: PROFESSIONS AND OCCUPATIONS

## PART 1370

## PROFESSIONAL BOXING AND WRESTLING ACT

## SUBPART A: STATUTORY AUTHORITY

Section  
1370.10 Statutory Authority (Repealed)

## SUBPART B: BOXING

Section  
1370.15 Application for a License as a Boxing Promoter  
1370.20 Application for a License as a Boxing Contestant, Second, Timekeeper, Referee, Judge, Matchmaker or Manager Repealed  
1370.25 Application for a Permit to Conduct a Boxing Contest  
1370.26 Seconds  
1370.27 Timekeepers  
1370.28 Referees  
1370.29 Boxers  
1370.30 Structure of Ring  
1370.40 Classes and Weights of Boxers  
1370.50 Fight Preparations (Repealed)  
1370.60 Ring Equipment (Repealed)  
1370.70 Conduct of a Contest (Repealed)  
1370.80 Scoring  
1370.90 Knockdowns  
1370.100 Fouls, Injuries, Loss of Mouthpiece  
1370.105 Ringside Physician and Paramedics  
1370.110 Drugs and Stimulants Use--of--substances--that--affect--performance; Stopping--bleeding  
1370.120 Conduct of Ring Officials  
1370.140 State of Illinois Boxing Championships  
1370.160 Manager - Boxer Contracts

## SUBPART C: WRESTLING

Section  
1370.200 Application Applications for a License as a Wrestling Promoter Repealed  
1370.205 Application for a License as a Referee or Timekeeper  
1370.206 Application for a Permit to Conduct a Wrestling Exhibition  
1370.207 General Wrestling Exhibition Requirements  
1370.210 Structure of Ring  
1370.220 Preparations for an Exhibition

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effective-October-17-1981-(the-Act)-

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

SUBPART B: BOXING

Section 1370.15 Application for a License as a Boxing Promoter

- a) An applicant for licensure as a boxing promoter shall file an application with the Department, on forms provided by the Department, and shall include:
- 1) A recent photograph;
  - 2) Proof of the filing of a surety bond of no less than \$5,000 as required by Section 11 of the Act to cover financial obligations;
  - 3) A financial statement prepared by a certified public accountant showing liquid working capital of \$10,000 or more or a \$10,000 performance bond guaranteeing payment of all obligations relating to the promotional activities;
  - 4) Proof that the applicant has had at least one year of experience in a boxing related profession or has been licensed in another jurisdiction for one year;
  - 5) Proof of good moral character, which includes any felony conviction that might have a direct relationship to duties as a promoter or any discipline in another jurisdiction in which the promoter is licensed; and
  - 6) The required fee set forth in Section 1370.305 of this Part.
- b) When the accuracy of any submitted documentation or the relevance or sufficiency of the experience is questioned by the Department or the Board because of lack of information, discrepancies or conflicts in information given or a need for clarification, the applicant seeking licensure shall be requested to:
- 1) Provide such information as may be necessary; and/or
  - 2) Appear for an interview before the Board to explain such relevance or sufficiency, clarify information or clear up any discrepancies or conflicts in information.
- (Source: Added at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 1370.20 Application for a License Licenses as a Boxing Contestant, Second, Timekeeper, Referee, Judge, Matchmaker or Manager

a) Contestants in a Boxing Contest Match.

- 1) First Time Boxers. (Amateur boxers desiring to turn professional) Applications for licensure shall be completed on forms supplied by the Department and---the-completed-application shall include:

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Section 1370.20 Application for a License Licenses as a Boxing Contestant, Second, Timekeeper, Referee, Judge, Matchmaker or Manager

- SUBPART D: GENERAL PROVISIONS
- |          |  |
|----------|--|
| Section  | Conduct of an Exhibition                 |
| 1370.230 | Length of an Exhibition                  |
| 1370.240 | Scoring                                  |
| 1370.250 | Holds (Repealed)                         |
| 1370.260 | Wrestler Out of Ring ring (Repealed)     |
| 1370.270 | Disqualification                         |
| 1370.280 | Australian Tag Team Wrestling (Repealed) |
| 1370.290 | Medical Supervision                      |
| 1370.300 |  |
- SUBPART A: STATUTORY AUTHORITY
- Section 1370.10 Statutory Authority (Repealed)
- These-Rules-are-promulgated-pursuant-to-Section-5-of-the-Act--Professional--Boxing and--Wrestling-Act,--enacted-by-Public-Act-82-5227--approved-September-167-19817

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- A) ~~1) A recent photograph or photo identification (e.g., driver's license, passport); two recent photographs;~~
- B) ~~Proof of age (driver's license or copy of birth certificate);~~
- C) ~~2 Social Security Number or similar identification (i.e., green card, visa); A copy of the results of a VBRB or marriage blood test;~~
- D) ~~Two years of amateur boxing experience for amateurs and the total number of bouts and a breakdown of wins and losses. The applicant shall have a minimum of 20 bouts or demonstrate exceptional fighting ability as approved by the Department;~~
- E) ~~3) The required fee set forth in Section 1370.305 of this Part; and~~
- F) ~~4) Proof of completion of a physical examination by a physician within 90 days after application for licensure. The physician shall conduct such examinations and tests as necessary to attest to the fitness of the applicant to engage in boxing contests, which shall include, but not be limited to:~~
- i) ~~E.K.G.;~~
  - ii) ~~Chest x-ray;~~
  - iii) ~~E.E.G.;~~
  - iv) ~~Urine test indicating no non-prescribed drugs; and~~
  - v) ~~Blood tests verifying no sexually transmitted diseases. Boxers must be free of the HIV virus to be licensed in Illinois.~~
- For a female boxer, in addition to the requirements of subsection (a)(1)(F)(i)-(v), the physical examination shall include a pelvic, abdominal and breast exam, noting any masses. The boxer shall also provide to the physician prior to the prefight exam the results of a U.C.G. (pregnancy) test taken within 48 hours before any event.
- Boxers Licensed in Other Jurisdictions. Application for licensure shall be completed on forms supplied by the Department and shall include:
- A) ~~Federal identification card and proof of licensure in another jurisdiction;~~
  - B) ~~Proof of completion of a physical examination by a physician. The physician shall conduct such examinations and tests as necessary to attest to the fitness of the applicant to engage in boxing contests. A female boxer shall also provide to the physician prior to the prefight exam the results of a U.C.G. (pregnancy) test taken within 24 hours before any event;~~
  - C) ~~Proof of current HIV Test. Boxers must be free of the HIV virus to be licensed in Illinois;~~
  - D) ~~Proof of age (driver's license or copy of birth~~

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- certificate);
- E) ~~Social security number or similar identification (i.e., green card, visa); and~~
  - F) ~~The required fee set forth in Section 1370.305 of this Part.~~
- 3) ~~Applicants over age 39 who have not competed in a contest within the last 24 months may be required to appear before the Board to determine their fitness to participate in a contest.~~
- b) ~~Other Applicants for licensure--Applications for licensure as boxing promoters, judges, trainers (seconds), managers, referees, and timekeepers shall be completed on forms supplied by the Department. The completed application shall include:~~
- 1) ~~Two recent photographs;~~
  - 2) ~~Evidence of good moral character through information relating to his other business and financial interests--Such evidence shall consist of, but not be limited to, whether there is a conflict of interest and whether the applicant has satisfactory business expertise;~~
  - 3) ~~Proof that the applicant has had at least one year of experience in the same area in amateur boxing contests or has been licensed in another state for one year; and~~
  - 4) ~~The required fee;~~
  - 5) ~~For promoters:~~
    - A) ~~Proof of the filing of the bond required by Section 9(f) of the Act; and~~
    - B) ~~A financial statement showing sufficient liquid assets to meet the financial obligations for anticipated events;~~
  - 6) ~~For managers and trainers/seconds--A listing of all contestants for which he will act in his professional capacity.~~
- b) ~~Seconds. Any person assisting or working the corner of any boxer must be licensed. Applications for licensure shall be completed on forms provided by the Department and shall include:~~
- 1) ~~A recent photograph;~~
  - 2) ~~Proof of a current license in another jurisdiction. Applicants not licensed elsewhere may be required to appear for an interview with the Board;~~
  - 3) ~~Proof of good moral character, which includes notification of any felony conviction that might have a direct relationship to duties as a second or any discipline in another jurisdiction in which the promoter is licensed; and~~
  - 4) ~~The required fee set forth in Section 1370.305 of this Part.~~
- c) ~~Referee, Judge or Timekeeper. Applications for licensure as a referee, judge or timekeeper shall be completed on forms provided by the Department and shall include:~~
- 1) ~~A recent photograph;~~
  - 2) ~~Proof of a medical examination from a physician licensed under the Medical Practice Act;~~
  - 3) ~~Proof of experience as a referee, judge or timekeeper for 5 of the last 7 years in amateur boxing, 3 of the last 5 years in~~



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Golden Glove Tournaments, 2 of the last 3 years in national tournaments or proof of licensure in another jurisdiction;

- 4) Proof of good moral character, which includes notification of any felony conviction that might have a direct relationship to duties as a referee, judge or timekeeper or any discipline in another jurisdiction in which the promoter is licensed; and

- 5) The required fee set forth in Section 1370.305 of this Part.

d) Manager and Matchmaker. Applications for licensure as a manager shall be completed on forms provided by the Department and shall include:

- 1) A recent photograph;
- 2) Proof of good moral character, which includes notification of any felony conviction that might have a direct relationship to duties as a manager or any discipline in another jurisdiction in which the promoter is licensed; and

- 3) The required fee set forth in Section 1370.305 of this Part.

e) When the accuracy of any submitted documentation or the relevance or sufficiency of the experience is questioned by the Department or the Board because of lack of information, discrepancies or conflicts in information given or a need for clarification, the applicant seeking licensure shall be requested to:

- 1) Provide such information as may be necessary; and/or
- 2) Appear for an interview before the Board to explain such relevance or sufficiency, clarify information or clear up any discrepancies or conflicts in information.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1370.25 Application for a Permit to Conduct a Boxing Contest

a) An application for a permit to conduct a boxing contest shall be completed on forms supplied by the Department at least 20 days prior to the scheduled event and shall include:

- 1) The names, addresses, phone numbers and fax numbers of the promoter and matchmaker;
- 2) The time, date and location of the event;
- 3) The seating capacity of the location where the event is to be held;

4) A copy of the lease or proof of ownership of the building where the event is to be held;

5) The admission charge or charges to be made;

6) A letter from the security agency licensed pursuant to the Private Detective, Private Alarm, Private Security and Locksmith Act of 1983 [225 ILCS 446] contracted to provide security for the show stating the number of guards they intend to use at that location on that date or a letter from the facility indicating in-house security will be provided on the date of the show;

7) The name, address and phone number of the nearest hospital with a

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neurosurgical unit; and

- 8) The fee required by Section 1370.305 of this Part.  
Within 10 days prior to the event, the promoter will be required to submit the following:

1) The amount of compensation to be paid to each participant;

2) The names of the contestants and current information from Fight

fax or its successor;

3) Proof of insurance as required by Section 8 of the Act:

A) Boxer's life insurance: \$10,000 minimum;

B) Boxer's medical insurance: \$10,000 minimum;

C) Public liability insurance: \$500,000 minimum; and

D) Property damage insurance: \$25,000 minimum.

c) Within 7 days prior to the event, the promoter shall submit to the Department a notarized printer's manifest for the amount and price of tickets printed for boxing promotions (if over 17,000 capacity, a printer manifest is not necessary). General admission tickets shall be consecutively numbered. When available, an electronic printout is to be given to a Department representative on the day of the show.

d) In addition the promoter shall submit the following contracts:

1) Three copies of the promoter and boxer contract for the main event shall be signed by the promoter, boxer and manager, if applicable, and filed with the Department a minimum of 5 days before the scheduled show.

2) Three copies of the contracts for the preliminary bouts shall be signed by the promoter, boxer and manager, if applicable, and filed with the Department a minimum of one day in advance of the scheduled show.

e) Within 24 hours prior to the event, the promoter shall provide to the Department the amount of the purse to be paid for the event.

f) It shall be the responsibility of the promoter or his/her designees (ringman/glovesman) to provide the following:

1) A ring that meets requirements set forth in Section 1370.30;

2) Boxing gloves, which shall not be less than 8 ounces or more than 12 ounces in weight. Women boxers shall not wear gloves that weigh less than 12 ounces. Webbed or thumbless gloves are mandatory and must be approved by a Department representative. New gloves must be used for the main event. The promoter or glovesman shall submit a form provided by the Department stating that he/she will provide new laces for the gloves and glove form when deemed necessary by a Department representative;

3) The promoter shall provide for rental or sale a foul-proof cup, trunks (3 pairs of small, medium and large), clean white towels, gauze (2 inch for hand wraps), shoe laces, a professional mouthpiece and medical tape;

4) Clean dressing room facilities, including washroom and shower for contestants and ring officials. Separate facilities shall be provided for male and female boxers;

5) Three small platforms or elevated chairs at ringside for the

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boxing judges;  
At least 4 buckets and 4 quart-sized bottles for use by the boxers;

6) A stretcher, oxygen and a gong or bell at ringside;

7) Notification to the boxers that a foul-proof cup, professional mouth piece and 2 pairs of different colored trunks are compulsory;

8) Notification to boxers of the weigh-in time and location. The promoter must notify boxers when to report to the dressing room. A Department representative will determine the time to report to each event;

9) Notification to the boxers that regulation boxing shoes shall be of soft material and not be fitted with spikes, cleats, hard soles or hard heels; and

10) Payment to the referee, announcer, licensed physician, timekeeper, paramedics and judges. The promoter shall give compensation, in cash, certified checks or money orders, to the Department at or before the weigh in. The Department employee will pay the officials and return a receipt to the promoter.

g) The Department shall be responsible for providing the physician and 2 paramedics at ringside.

(Source: Added at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 1370.26 Seconds**

a) Three seconds per boxer is the normal number allowed at a contest - one on the apron, one in the ring and one on the arena floor. A minimum of 2 seconds per boxer may be allowed, one on the apron and one in the ring. If requested, a maximum of 5 seconds per boxer may be allowed.

b) Seconds shall comply with the following:

1) No more than 3 seconds or fewer than 2 seconds will be allowed in a corner, unless prior approval is granted by the Department.

2) No yelling or coaching during a round. Seconds must remain seated during the round.

3) Seconds may not enter the ring until the gong sounds the ending of the round. Seconds must leave the ring when the timekeeper blows the whistle 10 seconds before the beginning of the next round.

4) Seconds must remove any obstruction such as buckets, stools, towels and other materials from the corner of the ring at the timekeeper's whistle.

5) Seconds should have clean white towels, sterile gauze pads, sterile cotton Q-tips, vaseline, chopped ice in buckets, water bottles sufficiently taped and a substance that is approved by the physician to stop the bleeding from cuts. No iron solution

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shall be used (i.e., McIsel's).

6) The chief second shall be responsible for the conduct of his/her assistant's seconds during the contest.

7) Good sportsmanship is expected at all times.

8) Seconds must wear disposable gloves while working in a boxer's corner.

c) Any violation of the requirements in subsection (b) of this Section may result in:

1) A deduction of points from the second's boxer;

2) Suspension of the second; and/or

3) Ejection from the corner.

d) Seconds must adhere to the following for wrapping hands:

1) In all weight classes, hand bandages shall be restricted to 10 yards of soft gauze bandage not more than 2 inches in width, held in place by not more than 6 feet of surgeon's tape, one-half inch in width, for each hand. Any deviation must have the approval of the Department official.

2) The binding of surgeon's tape must not be applied within one-half inch of the knuckles of the contestant's hand.

3) Completed wrapped hands must be approved by a Department official before and after the gloves are put on.

(Source: Added at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 1370.27 Timekeepers**

a) There shall be a timekeeper, licensed by the State of Illinois, responsible for keeping track of time during a contest.

b) Timekeepers shall be equipped with a whistle, a knockdown watch, a 3-minute stopwatch and a back-up gong that has been approved by the Department.

c) Timekeepers must adhere to the following:

1) The timekeeper shall use his/her whistle only to indicate that 10 seconds remain before the beginning of the next round.

2) The timekeeper shall indicate the commencing and conclusion of each round by sounding the gong or bell.

3) In the event of a knockdown, the timekeeper shall begin the count. The timekeeper's count is picked up by the referee and becomes the official count.

(Source: Added at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 1370.28 Referees**

a) Referees shall be licensed by the State of Illinois and shall be selected and assigned to boxing contests by the Department.

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## b) Referees shall adhere to the following:

- 1) When a referee has cause to suspect a violation, he/she shall file a report to the Department describing the event.
- 2) The referee must report for duty at least one hour before the scheduled starting time of the show and be examined by the physician or paramedics.
- 3) Referees must first report to Department representatives, then to ringside, and shall avoid conversation except with Department officials.
- 4) At the beginning of the contest, the referee shall call contestants to the center of the ring. Contestants shall be accompanied by their chief second only. After receiving instructions, the contestants shall shake hands and retire to their corners. They shall not shake hands again until the beginning of the last round.
- 5) The contestants, the physician and the referee shall be the only persons allowed in the ring during the progress of a round.
- 6) Referees shall wear disposable gloves when refereeing a bout.
- 7) The referee shall be the chief official of every contest and shall remain in the ring during the entire time of the contest.
- 8) The referee shall insure that the boxer stays in his/her corner between rounds.
- c) In the event a bout terminates before its scheduled number of rounds, the referee shall inform the judges and the Department of the exact duration of the bout.
- d) In the event of a knockout, technical knockout or disqualification, the boxer shall be suspended for a minimum of 45 days.

(Source: Added at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1370.29 Boxers

- a) Hair must be secured in a manner that it will not interfere with the vision or safety of either contestant.
- b) No cosmetics or jewelry shall be worn during a boxing event.
- c) Each contestant shall have available for the contest 2 uniforms of contrasting colors, consisting of a body shirt, athletic jersey and shorts. No leotards or other such costume is permissible.
- d) A contestant shall not wear corrective or contact lenses in the ring.
- e) Custom-fitted mouthpieces must be worn.
- f) Contests between male and female boxers are prohibited in Illinois.
- g) A breast protector is mandatory for female boxers, with both contestants wearing the same type.
- h) Women's boxing matches shall have 2-minute rounds.

(Source: Added at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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## Section 1370.30 Structure of Ring

## a) Size of Ring

- 1) The ring for a boxing contest shall be no less than 16 feet square, or larger than 24 feet square. The ring floor shall be constructed of at least a one-inch base of building board; it shall be padded with at least a one-inch layer of ensolite, foam rubber or their equivalent. There must be a top covering of canvas, duck or similar material tightly stretched and placed to the ring platform.
- 2) The ring shall have four posts not less than 3 inches in diameter that extend from the floor of the ring to a height of no less than 48 inches or more than 58 inches. The posts shall be securely anchored and adequately padded.
- b) The ring shall have 4 ~~a minimum of three~~ ropes, each not less than one inch in diameter. The ropes shall be padded with a soft material.
- c) The floor of the ring shall not be more than 4 ~~four~~ feet above the floor on which it is standing, and shall be supplied with steps for the entry and departure of contestants and officials, as the Department may require.
- d) The platform of the ring must extend beyond the ropes for a distance of at least 2 feet ~~one-foot~~.
- e) The ring shall be kept clear of obstructions.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1370.40 Classes and Weights of Boxers

- a) In accordance with generally accepted boxing practices, boxers shall be classified under the following classifications: ~~either--under--the classifications--listed--in--subsection--(a)(1)--or--(a)(2)--below--~~

1) Light Flyweight	not over 108 pounds
2) Flyweight	over 108 to 112 pounds
3) Bantamweight	over 112 to 118 pounds
4) Super Bantamweight	over 118 to 122 pounds
5) Featherweight	over 122 to 126 pounds
6) Super Featherweight	over 126 to 130 pounds
7) Lightweight	over 130 to 135 pounds
8) Light Welterweight	over 135 to 140 pounds
9) Welterweight	over 140 to 147 pounds
10) Light Middleweight	over 147 to 154 pounds
11) Middleweight	over 154 to 160 pounds
12) Super Middleweight	over 160 to 168 pounds
13) Light Heavyweight	over 168 to 175 pounds
11) Cruiserweight	over 175 to 195 pounds
12) Heavyweight	over 195 pounds



Section 1370.50 Fight Preparations (Repealed)

Before engaging in boxing competition, each contestant shall have his hands and wrists taped and bandaged. Bandages and tape shall be applied and adjusted in the presence of a representative from the Department.

- a) Bandages shall be of a soft surgical gauze quality and shall not be over two inches wide and ten yards in length for each hand. The bandages shall be wrapped on each hand smoothly and evenly.

- b) Any weight division change must be approved by the Department.
- 1) Traditional Classifications
- A) Flyweight over 112 to 118 pounds
  - B) Bantamweight over 118 to 126 pounds
  - C) Featherweight over 126 to 135 pounds
  - D) Lightweight over 135 to 147 pounds
  - E) Welterweight over 147 to 160 pounds
  - F) Middleweight over 160 to 175 pounds
  - G) Light Heavyweight over 175 pounds
  - H) Heavyweight

- 2) Junior Classifications
- A) Junior Flyweight 108 pounds or under
  - B) Junior Bantamweight over 108 to 115 pounds
  - C) Junior Featherweight over 115 to 122 pounds
  - D) Junior Lightweight over 122 to 130 pounds
  - E) Junior Welterweight over 130 to 140 pounds
  - F) Junior Middleweight over 140 to 154 pounds

b) The weight difference between contestants shall not exceed the allowance as follows:

- 1) 112 to 118 pounds, not more than 3 pounds
- 2) 118 to 126 pounds, not more than 5 pounds
- 3) 126 to 135 pounds, not more than 7 pounds
- 4) 135 to 147 pounds, not more than 9 pounds
- 5) 147 to 160 pounds, not more than 11 pounds
- 6) 160 to 175 pounds, not more than 12 pounds
- 7) 175 and over, no limit

c) Prior to engaging in a match or exhibition, all contestants shall submit to a weigh-in and a physical examination within 24 hours prior to the contest on the day of the contest.

d) The weigh-in shall be conducted at the time and place designated by the Department. The scales must weigh accurately and be capable of weighing up to an appropriate weight, as determined by the Department. The physical examination shall be conducted by a physician. He/she shall conduct such examination and tests as may be required, in order to attest to the fitness of the contestants engaged in the contest.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 1370.60 Ring Equipment (Repealed)

An ample supply of boxing gloves shall be provided for each contestant by the promoter.

a) All gloves must pass the inspection of the referee and representative of the Department.

b) Each glove shall weigh at least six ounces for flyweight boxers and at least eight ounces for heavier classes.

c) New sets of gloves must be available for the main event of every show.

d) Contestants must wear proper protective attire approved by the Department. All male boxers must equip themselves with a four-proof abdominal guard or cup.

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Each round shall commence at the sound of the bell. A round shall be no longer than 3 minutes and the end of each round shall be at the sound of the bell. A 1 minute rest period shall be allowed between each round.

a) The referee shall be the chief official of every contest and shall remain in the ring during the entire time of the contest.

b) Incapacitated Referee:

1) If a referee becomes incapacitated and is unable to finish scoring a boxing contest, the clock shall be stopped and another referee shall immediately be assigned to score the contest.

2) The substitute referee shall continue scoring on the scorecard used by the incapacitated referee and such scorecard shall be the official scorecard in the determination of decision at the conclusion of the boxing contest.

3) The substitute referee must continue the round from the time of his substitution.

c) Referees shall be selected and assigned by the Department. When a referee has cause to suspect a violation, he shall file a report to the Department describing the incident(s).

d) The referee must report for duty at least one hour before the scheduled starting time of the show.

e) Referees must first report to their dressing room, then to ringside. They must stay at ringside and will avoid conversation, except with Department officials.

f) At the beginning of the contest, the referee shall call contestants to the center of the ring. Each contestant shall be accompanied only by his chief second. After receiving instructions, the contestants shall shake hands and retire to their corners. They shall not shake hands again until the beginning of the last round.

g) The contestants and the referee shall be the only persons allowed in the ring during the progress of a round.

h) The chief second shall be responsible for the conduct of his assistant seconds during the contest.

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 1370.80 Scoring

a) Scoring shall be by 3 two licensed judges or 2 licensed judges and a referee in attendance to score each at each bout, stationed on opposite sides of the ring, and the referee. The judges shall watch every phase of the bout and make a decision if the contest lasts the full number of rounds scheduled. They shall be ready at all times, if requested by the referee, to assist in deciding whether fouls have been committed.

b) Points shall be awarded to contestants for clean lawful blows, landed on a vulnerable front part of the body above the belt. Points shall be credited by the judges in proportion to their damaging effects.

c) Aggressiveness shall be considered next in importance. Points shall be awarded to the contestant who sustains the action of a round by the greater number of skillful attacks.

d) Sportsmanship shall be considered next in importance. A contestant shall be awarded points for sportsmanlike action in the ring. Points may be taken away for unsportsmanlike conduct.

e) Defensive maneuvers are important and points shall be given for avoiding or blocking a blow.

f) Points shall be awarded where ring command is conspicuous. This comprises is comprised of such factors as the ability to take advantage of an opportunity; to cope with, foresee and neutralize an opponent's attack; or to force an opponent to adopt a style of boxing at which he is not skillful.

g) Points shall be deducted when a contestant persistently delays the action of a contest by clinching, holding or showing lack of aggressiveness.

h) System for Scoring a Contest

1) The scoring of the contest by the judges will be by either the five-point or ten 10-point system as determined by agreement between the promoter and the Department at the time of application for the permit.

2) Under the five-point system the winner of each round receives 5 points and the loser a proportionately less number. Under the 10-point ten-point system the winner of each round receives 10 points and the loser a proportionately less number.

3) If the round is even, each boxer receives the full number of points. No fractions are to be used.

4) If a round is stopped by a referee due to an accidental foul, the round shall be scored. The points shall be awarded to the boxer for the incomplete round.

i) No judges are necessary for boxing exhibitions, nor will there be an official score. All other rules shall apply.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 1370.90 Knockdowns

a) A contestant shall be considered by the referee to be knocked down when any part of his body other than his feet is on the ring floor, and if he is hanging over the ropes and unable to defend himself, or rising from a down position.

b) A contestant hanging over the ropes is not officially "down" until so pronounced by the referee.

c) When a contestant is knocked down, the referee shall order the opponent to retire to the farther neutral corner of the ring, pointing to the corner, and immediately pick up the count from the timekeeper and continue counting over the contestant who is down.

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- d) The referee shall announce the passing of the seconds, audibly, accompanying the count with motions of his arm, the downward motion indicating the end of each second.
- e) There shall be a mandatory eight-count. Any contestant who is knocked down shall not be allowed to resume boxing until after the referee has finished counting eight. The contestant may take this count either on the floor or standing.
- f) Three knockdowns in one round shall be regarded as justifiable reason for the referee to halt a contest. The referee may allow a fight to continue after a boxer has been knocked down three times, if in his/her judgment the boxer is able to continue.
- g) If the contestant taking the count is still down when the referee calls the count of "10ten", the referee shall wave both arms to indicate that he/she has been knocked out and has lost the bout. Should the opponent fail to stay in the farther corner, the referee shall cease counting until he/she has returned to it; he/she will then go on with the count from the point at which it was interrupted.
- h) The timekeeper's count is the official count. A boxer who is knocked unconscious must not be moved or touched by anyone, except at the direction of the physician.
- i) The bell does not save the boxer in any round. When a round other than the last round terminates before a contestant who has been knocked down shall have risen from the floor of the ring, the timekeeper's and referee's count shall be continued and, if the fallen contestant fails to rise before the count of ten, he shall be considered to have lost the bout by a knockout in the round last concluded.
- j) If any contestant fails to answer the bell after his/her rest period between rounds, the referee shall declare his/her opponent the winner by a technical knockout in the round coming up. The referee shall so indicate on his scorecard.
- k) Contestant Out of the Ring
- 1) If a contestant has been knocked out of the ring or has fallen out of the ring during a contest, the referee shall at once order the other boxer to a neutral corner and shall inform the timekeeper to suspend time until directed to resume by the referee.
  - 2) The contestant who has fallen out of the ring or has been knocked out of the ring must return to the ring unassisted by his seconds. The referee may have the contest continued if in his judgment doing so will not cause serious injury to the boxer. If the referee stops the bout because a boxer has been knocked out of the ring or has fallen from the ring, the boxer remaining in the ring shall be awarded the decision by a technical knockout.
  - 3) The referee may in his/her discretion stop a bout to protect a badly beaten boxer. The referee may stop a contest if he considers it too one-sided, or if a boxer can no longer protect himself. In cases where a boxer sustains a cut eye or any other injury which in the judgment

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of the referee may incapacitate the boxer, the referee may call the physician into the ring to examine the boxer. In such cases the referee shall be guided by the physician's advice.

- m) No manager or second shall bring about the termination of a contest by tossing in a towel. The manager or second shall notify the physician or referee that the bout needs to be stopped. Seconds cannot walk into the ring.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1370.100 Fouls, Injuries, Loss of Mouthpiece

## a) Fouls

- 1) If one of the contestants shall fall to the ring floor, or otherwise indicate an unwillingness to continue because of a claim of a low-blow foul, the contest may be terminated, and the referee may award the contest to this opponent.
- 2) In the case of an accidental foul so determined by the referee, the referee shall determine whether the contestant who has been fouled can continue. If the boxer's chances have not been seriously jeopardized as a result of the foul, the referee may order the bout continued after an interval of not more than 5 minutes rest.

- 3) The following actions in a boxing contest shall be considered fouls:

- A) Hitting below the belt; However, low-blows shall not be the cause of forfeiture of a match;
- B) Hitting an opponent who is down;
- C) Holding an opponent with one hand while hitting with the other;
- D) Holding or clinching after the referee orders the contestants to break, or hitting on the break;
- E) Wrestling or kicking;
- F) Butting with the head or shoulder;
- G) Hitting with open gloves, hitting with the butt of the hand, wrist, or elbow and all back hand blows;
- H) Roughing on the ropes;
- I) Hitting in the back or kidney area;
- J) Hitting on the back of the hand or neck;
- K) Jabbing the opponents eyes with the thumb of the glove;
- L) Hitting after the bell has sounded ending a round; and
- M) Conduct that which in the opinion of the referee is unsportsmanlike.

- 4) In case of an accidental foul, the referee shall determine whether the contestant who has been fouled can continue or not. If his chances have not been seriously jeopardized as a result of the foul the referee may order the bout continued after an



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interval of not more than 5 five minutes rest.  
5) Any contestant who deliberately fouls his opponent during a contest will be penalized with loss of points or disqualified depending upon the severity of harmfulness of the foul and its effect upon the opponent.

- b) Injuries (Cuts)
- 1) When an injury (cut) is caused by a fair blow and the severity is such that the contestant cannot continue, the injured boxer shall be declared the loser by a technical knockout.
  - 2) Should a boxer intentionally foul his/her opponent causing an injury so severe that the injured boxer cannot continue, the offender shall be declared the loser by disqualification. If under the same circumstances (intentional fouling) the contest can continue, the referee shall penalize the offender by deducting points, depending upon the severity of the offense. In this case the referee shall notify the judges and Department that the injury has been caused by an intentional foul so that, if in the subsequent rounds the same injury should become so severe that the contest has to be suspended, the decision will be awarded as follows:

- A) Technical Draw: If the injured boxer is behind on points or is even on the score cards of the judges.
- B) Technical Decision: If the injured boxer is ahead in points on the score cards of the judges.

3) In the case of a contestant who injures himself/herself trying to foul an opponent, the referee shall not take any action. The injury will be considered as produced by a fair blow from his/her opponent.

c) Loss of mouthpiece. When a mouthpiece is knocked out of a boxer's mouth, the referee may call time when he/she deems there is a lull in action (not in the heat of battle). The referee may have the cornerman replace the mouthpiece. This action may be done one time per boxer during the bout without points being deducted from the boxer whose mouthpiece came out, at the discretion of the referee.

d) Cessation of contest because of unexpected reasons. Should unexpected or accidental reasons determine the cessation of a contest before completion of the scheduled rounds, a technical decision shall be awarded to the contestant who is ahead in points on the scorecard of judges and the referee, provided that at least 4 rounds have been completed when the cessation occurs. If the cessation occurs before 4 rounds have been completed, the decision will be a technical draw.

e) The referee shall exercise immediate authority, direction and control over the contest to which he/she has been appointed and shall enforce the rules of the Professional Boxing and Wrestling Act. The referee shall be the only person authorized to determine injuries, to decide if injuries were produced by a foul and if the foul was intentional or accidental. The referee may consult with the judges and the majority will prevail.

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- f) The referee or physician shall have the power to stop a contest and render a decision at any stage if he/she considers it to be one-sided or if either contestant is in such condition that to continue the fight might subject the contestant to serious injury.
- g) In the case where a boxer receives a cut eye from a fair blow or an accidental butt or any other injury that a referee believes may incapacitate the boxer, the referee is empowered to stop the contest and consult the ringside physician concerning the advisability of allowing the bout to continue.
- h) A referee shall abide by the decision of the physician.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 1370.105 Ringside Physician and Paramedics

- a) Ringside Physician
  - 1) The ringside physician may enter the ring during the progress of a bout when he/she or the referee deems it necessary. He/she may enter the ring between rounds on his/her own judgment and shall inform the referee about his/her opinion in relation to the physical condition of either contestant.
  - 2) The physician shall have drugs and medical supplies available in the event of injury to a contestant.
  - 3) The physician shall report in writing to the Department all injuries received by a contestant. The physician shall also report on the fitness of the contestants to engage in further competition.

b) Paramedics

- 1) Paramedics shall be available at ringside to assist the ringside physician and provide emergency medical equipment, including resuscitation equipment.
- 2) Paramedics are responsible for a comprehensive evacuation plan for the removal of any seriously injured boxer from the boxing contest to a hospital facility where emergency medical care is provided.
- 3) Paramedics are responsible for knowing the location of the closest hospital emergency facility where adequate neurosurgical care is immediately available for skilled emergency treatment of an injured boxer.
- 4) Paramedics must check the vital signs of all boxers prior to their participation in a boxing contest and after boxers complete their bouts. Paramedics will record this information on forms provided by the Department. Paramedics also will record their recommendation (stitches, x-rays, etc.) and advise the ringside physician of their recommendation.

(Source: Added at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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**Section 1370.110 Drugs and Stimulants Use--of--substances--that--alter performance--stepping--bleeding**

The administration or use of drugs or stimulants, either before or during a match, to or by any boxer, is prohibited. Any contestants violating this Section shall be subject to disqualification.

- a) the direct or indirect administration and/or use of any substance for the purpose of altering the performance of a contestant in a contest is prohibited;
- b) iron solutions or similar drugs or compounds for stopping bleeding are prohibited.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 1370.120 Conduct of Ring Officials**

Officials (referees, judges, announcers and timekeepers) may not show any partiality to any boxer at any time. There shall be no discussion of any kind among officials with regard to the decision or program. The officials shall not discuss previous bouts while the program is in progress.

- a) No show shall be allowed to proceed unless a physician is available at ringside--the physician shall not leave until after completion of the final contest;
- b) in order that the physician shall be prepared to assist in the event of injury to a contestant, the physician shall have available drugs and medical supplies;
- c) the physician shall report in writing to the Department all injuries received by a contestant--He shall report on the fitness of the contestant to engage in further competition;
- d) the physician shall fill out insurance forms as may be required in connection with a contestant's injury;
- e) there shall be a timekeeper responsible for keeping track of time during the contest--He shall be equipped with a whistle, a knockdown watch and a three-minute stop watch;
- f) the timekeeper shall use his whistle only to indicate that ten seconds remain before the beginning of the next round;
- g) the timekeeper shall indicate the commencing and conclusion of each round by sounding the going or bell--the going or bell must be approved by the Department;
- h) in the event a bout terminates before its scheduled number of rounds the timekeeper shall inform the announcer of the exact duration of the bout;
- i) in the event of a knockdown the timekeeper shall begin the count which shall be continued by the referee;
- j) Between one and three weeks before the competition the promoter shall

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- submit to the Department a complete record of the last six performances of any boxer for whom he is arranging a contest;
- k) No more than three seconds shall work in any boxer's corner; they must wear sanitary attire;
- l) Seconds shall not enter a ring until a bell indicates the end of the round--They shall leave the ring with the sound of the timekeeper's whistle--ten seconds before the round is to begin--They shall remove all obstructions from the ring;
- m) Seconds are not permitted to yell or shout to contestants during the contest--they may not assist a contestant during the round or heckle or annoy his opponent--the chief second shall be equipped with adequate first aid supplies.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 1370.140 State of Illinois Boxing Championships**

- a) All title bouts will be at least 8 or 10 rounds, each of which is 3 minutes, with one minute of rest between rounds.
- b) Scoring will be the 10-point system as described in Section 1370.80. The scoring will be done by 3 judges. The referee will be a non-scoring official.
- c) In the event a boxer is knocked down, there will be a mandatory 8-count. There is no standing 8-count.
- d) The bout will be stopped any time the referee or physician considers it necessary for the safety of either contestant.
- e) The weigh-in will be set by the Department. The champion and challenger will have 2 hours after the initial weigh-in to make weight, if either fails to make weight, no title will be at stake.
- f) A champion must keep his/her boxing license up to date. He/she will have 30 days after the expiration date, which is September 30 of odd-numbered years, to renew his or her license. If the license is not renewed, the boxer's title will be vacated.
- g) A champion must defend or have a contract to defend his/her title every 6 months or his/her title will be vacated.
- h) If a champion is convicted of any felony and must be incarcerated, his/her title will be declared vacant.
- i) If a champion wins a major title, such as International Boxing Federation, World Boxing Organization, WBO, World Boxing Association, NABF, NABO or United States Boxing Association, he/she must relinquish his/her State title.
- j) All championship bouts must be approved by the Department.
- k) A 10% fee above the normal scale will be paid to the officials who work the championship bout.
- l) The championship belt must be provided by the promoter for the new champion.
- m) It is the responsibility of the champion's manager to contact a



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promoter for the defense of the champion's title.

- n) There will be no sanction fee for the championship bout.  
 o) Gloves will be 8-ounce thumb web. Contestants 150 pounds and over may wear 10-ounce gloves.  
 p) A boxer must be licensed in Illinois and residing in Illinois or an adjacent state before he/she is eligible to be rated. He/she must also have at least one fight every 6 months.

(Source: Added at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 1370.160 Manager - Boxer Contracts

- a) A licensed manager and boxer shall file their contract with the Department.  
 b) The Department shall recognize the filed document until such time as both parties appear before the Department to cancel or a court of law so notifies the Department that the contract is null and void.

(Source: Added at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART C: WRESTLING

Section 1370.200 Application Applications for a License as a Wrestling Promoter Licenses

- a) An applicant for licensure as a wrestling promoter shall file an application. ~~Wrestling Promoter~~. ~~Applications for registration shall be completed~~ on forms supplied by the Department, and ~~and shall be submitted with the required fee~~. ~~The application~~ shall include:

- 1) Two recent photographs;
  - 2) Proof of the filing of the surety bond of no less than \$10,000 to cover financial obligations required by Section 11 94 of the Act; and
  - 3) A financial statement prepared by a certified public accountant showing ~~sufficient~~ liquid working capital of at least \$10,000 or a performance bond of at least \$10,000 guaranteeing payment of obligations relating to the wrestling exhibition; ~~assets to meet the financial obligations for anticipated events~~;
  - 4) Proof of good moral character, which includes notification of any felony conviction that might have a direct relationship to duties as a promoter or any discipline in another jurisdiction in which the promoter is licensed;
  - 5) Proof of at least one year of experience in the wrestling profession; and
  - 6) The required fee set forth in Section 1370.305.
- b) When the accuracy of any submitted documentation or the relevance or

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sufficiency of the experience is questioned by the Department or the Board because of lack of information, discrepancies or conflicts in information given or a need for clarification, the applicant seeking licensure shall be requested to:

- 1) Provide such information as may be necessary; and/or
  - 2) Appear for an interview before the Board to explain such relevance or sufficiency, clarify information or clear up any discrepancies or conflicts in information.
- b) ~~Other Applications for licensure~~. ~~Applications for licensure as managers, referees, and timekeepers shall be completed on forms supplied by the Department. The application shall include:~~
- 1) Two recent photographs;
  - 2) Evidence of good moral character through information relating to his other business and financial interests. Such evidence shall consist of but not be limited to information showing whether there is a conflict of interest and whether the applicant has satisfactory business expertise;
  - 3) Proof that the applicant has had at least one year of experience in the same area in amateur wrestling contests or has been licensed in another state for one year; and
  - 4) The required fee;
  - 5) For managers and trainer/seconds, a listing of all contestants for which he will act in his professional capacity.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 1370.205 Application for a License as a Referee or Timekeeper

- a) An applicant for licensure as a referee or timekeeper shall file an application with the Department, on forms supplied by the Department, and shall include:

- 1) A recent photograph;
  - 2) Proof of good moral character, which includes notification of any felony conviction that might have a direct relationship to duties as a referee or timekeeper or any discipline in another jurisdiction in which the referee or timekeeper is licensed;
  - 3) Proof of at least one year's experience in the wrestling profession;
  - 4) A letter of recommendation from a licensed wrestling promoter; and
  - 5) The required fee set forth in Section 1370.305.
- b) When the accuracy of any submitted documentation or the relevance or sufficiency of the experience is questioned by the Department or the Board because of lack of information, discrepancies or conflicts in information given or a need for clarification, the applicant seeking licensure shall be requested to:
- 1) Provide such information as may be necessary; and/or



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- 2) Appear for an interview before the Board to explain such relevance or sufficiency, clarify information or clear up any discrepancies or conflicts in information.

(Source: Added at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 1370.206 Application for a Permit to Conduct a Wrestling Exhibition**

- a) An application for a permit to conduct a wrestling exhibition shall be completed on forms supplied by the Department at least 10 days prior to the scheduled event and shall include:

- 1) The names, addresses and license numbers of the promoters;
- 2) The time, date and location of the event;
- 3) The seating capacity of the location where the event is to be held;

- 4) A copy of the lease or proof of ownership of the building where the event is to be held;

- 5) The admission charge or charges to be made;

- 6) A letter from the security agency licensed pursuant to the Private Detective, Private Security, Private Alarm and Locksmith Act of 1983 contracted to provide security for the show stating the number of guards they intend to use at that location on that date or letter from the facility indicating in-house security will be provided on the date of the show;

- 7) Names of the contestants;

- 8) Proof of a minimum of \$10,000 liability insurance for each contestant;

- 9) Name, address and phone number of the nearest hospital with a neurological unit; and

- 10) The fee required by Section 1370.305 of this Part.

- b) Any special request regarding the conduct of the wrestling exhibition must be approved prior to the exhibition by Department representatives.

(Source: Added at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 1370.207 General Wrestling Exhibition Requirements**

- a) Registration of wrestlers is required, on forms provided by the Department, prior to their participation in a professional match held in Illinois. Wrestlers must provide their ring name, social security number, address, telephone number and a photograph.

- b) Promoters, timekeepers and referees must be licensed by the Department.

- c) No female versus male exhibitions are permitted.

- d) No animal versus human exhibitions are allowed.

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- e) Any non-licensed person participating in a wrestling exhibition must register his/her name, address, telephone number and social security number with the Department.

- f) All wrestlers must be examined by a licensed physician, paramedic or nurse prior to their wrestling exhibition.

(Source: Added at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 1370.210 Structure of Ring**

- a) The ring for a wrestling exhibition shall be no less than 15 feet square, or larger than 24 feet square. The ring floor shall be constructed of at least a one-inch base of building board; it shall be padded with a one-inch layer of ensolite, foam rubber or their equivalent. There must be a top covering of canvas, duck or similar material tightly stretched and placed to the ring platform. The covering must be lean and free of resin. The ring shall have four posts not less than 3 inches in diameter that extend from the floor of the ring to a height of no less than 48 inches or more than 58 inches. The posts shall be securely anchored and adequately padded.

- b) The ring shall have a minimum of 3 three ropes, each not less than one inch in diameter. The ropes shall be padded with a soft material.

- c) The floor of the ring shall not be more than 4 four feet above the floor on which it is standing, and shall be supplied with steps for the entry and departure of contestants and officials, as the Department may require.

- d) The platform of the ring must extend beyond the ropes for a distance of at least 3 three feet.

- e) The ring shall be kept clear of obstructions.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 1370.220 Preparations for an Exhibition**

- a) Prior to engaging in an exhibition, all wrestlers shall submit to a physical examination on the day of the exhibition.

- b) The physical examination shall be conducted by a physician. He shall conduct such examinations and tests as may be required to attest to the fitness of the contestants engaged in the exhibition. The promoter shall provide a stretcher and oxygen inhalator at ringside in case of emergency.

- b)d) Dressing rooms must be equipped with:

- 1) Showers;
- 2) Rubbing tables; and
- 3) Chairs or benches.

- c)e) The wrestler's skin must be free of grease or other foreign

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substances. The fingernails must be trimmed well below the tops. Clothing shall be suitable for an athletic contest and shoes shall have soft tops and soles.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1370.230 Conduct of an Exhibition

- a) The referee shall be the chief official of every exhibition and shall remain in the ring during the entire time of the exhibition.
- b) In the event a referee becomes incapacitated and is unable to finish officiating the exhibition, time out shall be called and another referee shall immediately be assigned to officiate.
- c) Referees shall be selected and assigned by the Department. When a referee has cause to suspect a violation, he shall file a report to the Department describing the incident(s).
- d) The referee must report for duty at least one hour before the scheduled starting time of the show.
- e) Referees must first report to their dressing room, then to ringside. They must stay at ringside and will avoid conversation, except with Department officials.
- f) At the beginning of the exhibition, the referee shall call the wrestlers to the center of the ring.
- g) The wrestlers and the referee shall be the only persons allowed in the ring during the progress of an exhibition.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1370.260 Holds (Repealed)

Any type of hold, grip, lock, or trip shall be allowed except:

- a) Strangle hold, scratching, gouging, hitting, or striking with the fist, pulling hair, using knuckles and kicking
- b) Shutting off breathing by covering nose and mouth at the same time, and
- c) Beliberately throwing opponents out of the ring.

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1370.270 Wrestler Out out of Ring ring (Repealed)

When one wrestler is out of the ring, whether on the apron under the ropes or on the floor, his opponent shall immediately retire to the opposite side of the ring and remain there until the wrestler who is out of the ring has returned and the referee has instructed them to resume wrestling.

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- a) When wrestler falls from ring
  - 1) When one or both wrestlers fall from the ring so that part of the body touches the floor, the referee and timekeeper shall begin a count.
  - 2) The count shall be to either 10 or 20, as determined by agreement between the wrestlers and the Department at the time of application for the permit.
  - 3) If neither wrestler returns before the end of the count, the match shall be declared a draw.
  - 4) If one wrestler returns to the ring before the end of the count, but his opponent fails to return before the end of the count, the match shall end with the wrestler in the ring being awarded the decision.
- b) Wrestlers under ropes
  - 1) When wrestlers roll under the ropes but not off the apron of the ring, the referee and timekeeper shall begin a count of five.
  - 2) If neither wrestler returns before the end of the count of five, the match shall end and neither wrestler will be awarded the decision.
  - 3) If one wrestler returns to the ring before the end of the count of five and his opponent fails to return before the end of the count of five, the match shall end and the wrestler in the ring shall be awarded the decision.

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1370.290 Australian Tag Team Wrestling (Repealed)

In addition to the above Rules governing wrestling, the following requirements shall apply to Australian Tag Team Wrestling:

- a) There shall be a 60-minute time limit or two of three team falls with two minutes rest between team falls. Team falls occur only when one wrestler from a team has lost a fall.
- b) The exhibition begins with one wrestler from each team wrestling each other while the team partner remains on the apron of the ring.
- c) Tagging
  - 1) In order to reach his partner, a wrestler must have hold of a regulation three-foot double-rope with a knot in one end, and the other end looped over the ring post of his team's corner. At the time of a tag contact between partners, the wrestler outside of the ropes must have both feet on the apron floor and must reach only over the top rope to make the contact.
  - 2) A wrestler can enter the ring only if his partner is defeated or he is able to touch his partner's hand to relieve him.
- d) After tagging his partner, a wrestler in the ring must retire to the outside of the ring before his partner can enter the ring.
- e) Team partners may substitute for each other as often as they desire.

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- but must do so by the procedure outlined above:
- f) time out must be taken after an injury to permit the injured contestant to be removed from the ring;
  - g) if a wrestler is injured so that he cannot continue, his partner must carry on alone;
  - h) if neither team has been able to win two falls at the expiration of the time limit, the team having the most falls to its credits is to be declared the winner;
  - i) if a shall be cause for disqualification for a contestant, while awaiting his turn, to release his hold on the rope in his corner until tagged by his partner;
  - j) it shall also be cause for disqualification for a contestant, while awaiting his turn on the apron, to assist his partner or to interfere with an opponent;

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1370.300 Medical Supervision

- a) No wrestling exhibition shall be allowed to proceed unless a physician is available at ringside or on call. If the physician is on call, a registered nurse, certified paramedic or a registered physician's assistant must be available at ringside. The medical personnel shall not leave until after completion of the final exhibition.
- b) In order that the medical personnel shall be prepared to assist in the event of injury to a wrestler, the medical personnel shall have available drugs and medical supplies to be administered only by the physician or at his/her direction.
- c) The medical personnel present shall report in writing to the Department all injuries received by any contestant. He/she shall report on the fitness of the wrestler to engage in further competition.
- d) The medical personnel present shall fill out insurance forms as may be required in connection with a wrestler's injury.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART D: GENERAL PROVISIONS

## Section 1370.310 Definitions

Unless the text indicates otherwise, the following terms shall be defined as indicated:

"Act" means the Professional Boxing and Wrestling Act [225 ILCS 105].

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"Athletic event" means both professional boxing contests and wrestling exhibitions.

"Department" means the Department of Professional Regulation.

"Board" means the State Boxing and Wrestling Board.

a) "Exhibition" means a show of boxing or sparring in which there is no score or decision.

b) "Manager" means a person licensed by the Department who is not a promoter and who, under contract, agreement or other arrangement with any boxer, undertakes to directly or indirectly control or administer the boxing affairs of boxers. One who, for compensation, directs or controls the professional activities of any boxer or wrestler.

c) "Physician" means a person licensed by the Department to practice medicine in all of its branches.

d) "Show" means a complete program of boxing or sparring contests or exhibitions, or wrestling matches or exhibitions.

e) "Australian tag team" means a team of two wrestlers who wrestle against another team of two wrestlers.

f) "Fall or pinned" means the act of one wrestler keeping another wrestler on his back so that both shoulders touch the mat for a count of three seconds.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1370.320 Applications for Permits (Repealed)

a) Applications for permits to conduct boxing contests or to hold wrestling exhibitions are supplied by the Department. Such application shall be received by the Department at least 10 working days prior to the date of the scheduled event. The application shall include:

- 1) Names and addresses of all officers of the club, partnership, corporation or association;
- 2) The required fee;
- 3) The exact time and place of the show;
- 4) The admission charge or charges;
- 5) The name of the contestants and, for boxing contests, the names of the seconds;
- 6) The amount of compensation or percentage of gate receipts to be paid to each participant;
- 7) Names of Medical Personnel;
- A) For a boxing show, the name of the physician who will be



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- present at the show, and
- B) For a wrestling show, the name of the physician who will be present the night of the show, or the name of the physician who will be on call that night, and the name of the registered nurse, certified paramedic, or physician assistant who will be present at the show, and the seating capacity of the building or hall where the show is to be held.
- 8) The time of application for permit the promoter shall also submit the following:
- 1) A copy of the lease or proof of ownership of the property in which the show is to be held;
  - 2) A letter from the security agency contracted to provide security for the show, stating the number of guards they intend to use at that location on that date;
  - 3) Proof of medical, hospital, and life insurance as required by Section 912 of the Act;
- C) For boxing contests in an emergency, the Director may issue a temporary permit to engage in a single boxing contest pursuant to Section 9 of the Act.

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1370.325 Requirements for Closed Circuit Telecasts (Repealed)

- a) Closed circuit telecasts for boxing and wrestling exhibitions shall be held by promoters licensed in accordance with Sections 1370-20 and 1370-200 of this Part.
- b) No show unlimited closed circuit events for one year, a licensed promoter shall file an application with the Department on forms provided by the Department, along with a \$400 per year registration fee.
- c) In addition for each event to be telecast, the promoter shall notify the Department at least 10 days prior to the event on forms provided by the Department of the location, date and time of the telecast. The notification shall include a \$25 fee for each location where the telecast is shown.

(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1370.330 Compensation (Repealed)

Compensation of the referee, announcer, timekeeper, judges, and medical personnel shall be paid by the promoter, but the Director shall establish the fee to be paid which shall be the usual and customary fee.

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(Source: Repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1370.340 Payment of Taxes

Pursuant to Section 13 of the Act, a tax of 10% of the first \$500,000 of total gross receipts from the sale of admission tickets of admission to an athletic event a contest, exhibition or show shall be paid by the promoter to the Department to be placed in the general revenue fund. The tax is to be paid on the day of the athletic event. To facilitate assessment of the tax, the following procedures shall be followed:

- a) Tickets shall be printed in such form as the Department shall prescribe.
- b) A sworn inventory of all tickets printed for any show shall be mailed to the Department by the promoter printer at least 10 days before the show.
- c) A sworn inventory of all tickets printed for any show shall be sent to the Department by the promoter within 24 hours after receipt of delivery from the printer. The total number of tickets printed shall not exceed the total seating capacity of the premises where the event in which the show is to be held.
- d) No tickets of admission to any athletic event show shall be sold except tickets declared on an official ticket inventory. Tax shall be collected on all tickets unaccounted for immediately after the event show.
- e) No ticket holder shall pass be passed through the gate without having the ticket separated from the stub. However, members of the news media assigned to work by their regular recognized employers, policemen and firemen in uniform and on duty, and persons of similar vocation are admitted free and are not liable for any tax on admission.
- f) The promoter shall send a verified, written report, showing the number of tickets sold for the show and the amount of the gross proceeds to the Department within 24 hours of the determination of the contest or exhibition, as required by Section 13 of the Act.
- g) The Department shall collect the tax based on the face value of the tickets sold.
- f)h) All cases where it is determined that a promoter has made an incorrect statement of gate receipts, or has used tickets not appearing on the inventory, or by any subterfuge purports to reduce the amount of tax due under the law will result in revocation of license and/or forfeiture of bond.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1370.350 Public Safety

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No liquid refreshments may be sold at the scene of a show except in paper containers. Chairs must be securely attached so that they are not portable. Any exceptions must be approved by the Department.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1370.360 Renewals

- a) Every license and registration issued under the Act shall expire on October 1 of each odd numbered year. The holder of a license or registration may renew his/her license or registration during the month preceding the expiration date thereof by paying the required fee.
- b) Licensed boxers shall provide an updated medical record with their renewal in order to renew their license.
- c) It is the responsibility of each licensee/registrant to notify the Department of any change of address. Failure to receive a renewal form from the Department shall not constitute an excuse for failure to pay the renewal fee.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1370.370 Granting Variances

- a) The Director may grant variances from this Part these rules in individual cases where he/she finds that:
- 1) The provision from which the variance is granted is not statutorily mandated;
- 2) No party will be injured by the granting of the variance; and
- 3) The rule from which the variance is granted would, in the particular case, be unreasonable or unnecessarily burdensome.
- b) The Director shall notify the State Boxing and Wrestling Board of the granting of such variance, and the reasons therefor, at the next meeting of the Board.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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- 1) Heading of the Part: County Motor Fuel Tax

- 2) Code Citation: 86 Ill. Adm. Code 695

- 3) Section Numbers: Proposed Action:  
695.101 New  
695.105 New  
695.110 New  
695.115 New  
695.120 New  
695.125 New  
695.130 New

- 4) Statutory Authority: 55 ILCS 5/5-1035

- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking implements the County Motor Fuel Tax Law, 55 ILCS 5/5-1035.1, which authorizes the counties of DuPage, Kane, and McHenry to impose a tax upon all persons engaged in the business of selling motor fuel, and includes provisions concerning the nature of the tax, registration and returns, and claims.

- 6) Will this proposed rulemaking replace an emergency rule currently in effect? No

- 7) Does this rulemaking contain an automatic repeal date? No

- 8) Does this proposed rulemaking contain incorporations by reference? Yes

- 9) Are there any other proposed amendments pending on this Part? No

- 10) Statement of Statewide Policy Objectives: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.

- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this notice to:

Gina Roccaforte  
Illinois Department of Revenue  
Legal Services Office  
101 West Jefferson  
Springfield, Illinois 62794  
Phone: (217) 782-6996

- 12) Initial Regulatory Flexibility Analysis:

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- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Retailers of motor fuel in the counties of DuPage, Kane, and McHenry
- B) Reporting, bookkeeping or other procedures required for compliance: Minimal
- C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: July 2000

The full text of the Proposed Rules begins on the next page:

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TITLE 86: REVENUE  
CHAPTER I: DEPARTMENT OF REVENUE

PART 695  
COUNTY MOTOR FUEL TAX

Section	
695.101	Nature of the County Motor Fuel Tax
695.105	Registration and Returns
695.110	Claims to Recover Erroneously Paid Tax
695.115	Jurisdictional Questions
695.120	Incorporation of Retailers' Occupation Tax Regulations by Reference
695.125	Penalties, Interest and Procedures
695.130	Effective Date

AUTHORITY: Implementing the County Motor Fuel Tax Law [55 ILCS 5/5-1035.1] and authorized by Section 2505-95 of the Civil Administrative Code of Illinois [20 ILCS 2505/2505-95].

SOURCE: Adopted at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

Section 695.101 Nature of the County Motor Fuel Tax

- a) Authority to Impose Tax
- Under the County Motor Fuel Tax Law ("Law") [55 ILCS 5/5-1035.1] the county board of the counties of DuPage, Kane and McHenry may, by an ordinance or resolution adopted by the affirmative vote of a majority of the members elected or appointed to the county board, impose a tax upon all persons engaged in the business of selling motor fuel, as now or hereafter defined in the Motor Fuel Tax Law [35 ILCS 505], at retail for the operation of motor vehicles upon public highways or for the operation of recreational watercraft upon waterways. Kane County may exempt diesel fuel from the tax imposed pursuant to this Section. If imposed, such tax shall only be imposed in half-cent increments, at a rate not exceeding 4 cents per gallon of motor fuel sold at retail within the county for the purpose of use or consumption and not for the purpose of resale. The proceeds from the tax shall be used by the county solely for the purpose of operating, constructing and improving public highways and waterways, and acquiring real property and rights-of-way for public highways and waterways within the county imposing the tax. The County Motor Fuel Tax imposed under the County Motor Fuel Tax Law is an occupation tax upon retailers of motor fuel and is administered by the Illinois Department of Revenue ("Department") in the same manner as the Retailers' Occupation Tax. The tax imposed by a county board under the County Motor Fuel Tax Law and this Part, and all civil penalties that may be assessed as an



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incident thereof, shall be collected and enforced by the Department.

- b) Passing on the Tax  
The legal incidence of the County Motor Fuel Tax Law is on the seller. Nevertheless, the General Assembly has authorized persons subject to any tax imposed pursuant to the authority granted in the County Motor Fuel Tax Law to reimburse themselves for their County Motor Fuel Tax liability by separately stating such tax as an additional charge, which charge may be stated in combination, in a single amount, with State tax which sellers are required to collect under the Use Tax Act [35 ILCS 105], pursuant to such bracket schedules as the Department has prescribed (see 86 Ill. Adm. Code 150. Table A).
- c) Exclusion from "Gross Receipts"  
Any amount added to the selling price of motor fuel by the seller because of a County Motor Fuel Tax, or because of the Illinois Retailers' Occupation Tax [35 ILCS 120], the Illinois Use Tax [35 ILCS 105], or any local occupation or use tax administered by the Department and collected from the purchaser, shall not be regarded as a part of the seller's gross receipts that are subject to such County Motor Fuel Tax.

**Section 695.105 Registration and Returns**

- a) Separate Registration Not Required  
A retailer's registration under the Illinois Retailers' Occupation Tax Act [35 ILCS 120] is sufficient for the County Motor Fuel Tax Law. No special registration for the County Motor Fuel Tax Law is required.
- b) Requirements as to Returns
  - 1) The information required for the County Motor Fuel Tax Law shall be furnished on the return form prescribed by the Department.
  - 2) On or before the twentieth day of each calendar month, every person engaged in the business of selling motor fuel, as now or hereafter defined in the Motor Fuel Tax Law [35 ILCS 505], at retail in the counties of DuPage, Kane or McHenry for the operation of motor vehicles upon public highways or for the operation of recreational watercraft upon waterways during the preceding calendar month shall file a return with the Department for such preceding month, stating the name of the seller; the address of his principal place of business, the address of the principal place of business (if that is a different address) from which he is engaged in the business of selling such motor fuel at retail; total gallons of motor fuel sold; deductions allowed by law; and amount of tax due.
  - 3) If the retailer files his Illinois Retailers' Occupation Tax returns on the gross receipts basis, he must report County Motor Fuel Tax information in his returns on the same basis. If the retailer files his Illinois Retailers' Occupation Tax returns on the gross sales basis, he must report County Motor Fuel Tax information in his returns on the gross sales basis.

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**Section 695.110 Claims to Recover Erroneously Paid Tax**

Claims for Multiple Taxes. If a claimant files a claim for refund on a transaction which was subject to State and local taxes administered by the Department, the claim need not be filed separately for each type of tax. A single claim for the total of all applicable taxes will suffice. The claim will be audited, heard, or otherwise processed as a single claim whenever possible. A single credit memorandum will be issued that may be used by the claimant or his authorized assignee to pay State or local tax liability as authorized in 86 Ill. Adm. Code 130.1505(b)(1).

**Section 695.115 Jurisdictional Questions**

- a) County Defined  
When used in this Part, "county" means any one of the counties of DuPage, Kane or McHenry authorized under the County Motor Fuel Tax Law [55 ILCS 5/5-1035.1] to impose a County Motor Fuel Tax.
- b) Mere Solicitation of Orders Not Doing Business
  - 1) For a seller to incur County Motor Fuel Tax liability in a given county, the sale must be made in the course of such seller's engaging in the retail business within such county. In other words, enough of the selling activity must occur within the county to justify concluding that the seller is engaged in business within the county with respect to that sale.
  - 2) For example, the Supreme Court has held the mere solicitation and receipt of orders within a taxing jurisdiction (the State), where such orders were subject to acceptance outside the taxing jurisdiction and title passed outside such jurisdiction; with the goods being shipped from outside such jurisdiction to the purchaser in such jurisdiction, did not constitute engaging in the business of selling within such jurisdiction. This conclusion was reached independently of any question of interstate commerce and so would apply to the county as the taxing jurisdiction as much as to the State as the taxing jurisdiction.
- c) Seller's Acceptance of Order
  - 1) Without attempting to anticipate every kind of fact situation that may arise in this connection, it is the Department's opinion, in general, that the seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business within the county or by someone who is working out of such place of business and who does not conduct the business of selling elsewhere within the meaning of subsections (g) and (h) of this Section, or if a purchase order that is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the county or by someone working out of such place of business, the seller incurs County

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Motor Fuel Tax liability in that county if the sale is at retail and the purchaser receives the physical possession of the motor fuel in Illinois. The Department will assume that the seller has accepted the purchase order at the place of business at which the seller receives such purchase order from the purchaser in the absence of clear proof to the contrary.

- 2) If a purchase order is accepted outside the county, but the motor fuel that is sold is in an inventory of the retailer located within the county at the time of its sale (or is subsequently produced in the county), then delivered in Illinois to the purchaser, the place where the motor fuel is located at the time of the sale (or subsequent production in the county) will determine where the seller is engaged in business for County Motor Fuel Tax purposes with respect to such sale.

d) Some Considerations that are Not Controlling

- 1) Delivery of the motor fuel within the county to the purchaser is not necessary for the seller to incur County Motor Fuel Tax liability. It is sufficient that the purchaser receives the physical possession of the motor fuel somewhere in Illinois as far as the question of delivery is concerned. This is true because there is no exemption for intercounty commerce comparable to the exemption arising from interstate commerce, and it is not necessary for delivery to be completed within the county for the seller to be regarded as being engaged in the business of selling within such county with respect to that sale.

- 2) The point at which the motor fuel will be used or consumed and the place at which the purchaser resides are also immaterial in determining whether the seller incurs County Motor Fuel Tax liability. Furthermore, the place at which the technical sale occurs (i.e., the place at which title passes) is not a decisive consideration since the phrase "in the county" in the County Motor Fuel Tax Law refers only to the location of the occupation of selling that is being taxed and not to the place where sales may be made. (See Standard Oil Company vs. Department of Finance et al., 383 Ill. 136 (1934), for a similar problem under the Illinois Retailers' Occupation Tax Act.)

- e) Place of Business Where Long Term or Blanket Contracts are Involved  
Under a long term blanket or master contract that (though definite as to price and quantity) must be implemented by the purchaser's placing of specific orders when goods are wanted, the seller's place of business with which such subsequent specific orders are placed (rather than the place where the seller signed the master contract) will determine where the seller is engaged in business for County Motor Fuel Tax purposes with respect to such orders.

- f) Sales from Vehicles Carrying Uncommitted Stock of Goods  
The seller's place of engaging in business when making sales and deliveries (not just deliveries pursuant to previously accepted orders, but actual sales and deliveries) from a vehicle in which motor

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fuel is being carried for sale is the place at which such sales and deliveries happen to be made -- the vehicle carrying such motor fuel.

### Section 695.120 Incorporation of Retailers' Occupation Tax Regulations by Reference

To avoid needless repetition, the substance and provisions of all Retailers' Occupation Tax Regulations (86 Ill. Adm. Code 130) that are not incompatible with the County Motor Fuel Tax Law or any special regulations that may be promulgated by the Department under the Law shall apply to the tax imposed pursuant to this Part.

### Section 695.125 Penalties, Interest and Procedures

All penalties (both civil and criminal), provisions concerning interest, and procedures (such as the making of assessments, the venue and mode of conducting hearings, subpoenas, matters pertaining to judicial review and other procedural subjects), together with statutes of limitation, are the same under the County Motor Fuel Tax Law as under the Illinois Retailers' Occupation Tax Act [35 ILCS 120] and the Uniform Penalty and Interest Act [35 ILCS 735].

### Section 695.130 Effective Date

An ordinance or resolution imposing a County Motor Fuel Tax or effecting a change in the rate thereof shall be effective on the first day of the second calendar month next following the month in which the ordinance or resolution is adopted and a certified copy thereof is filed with the Department, whereupon the Department shall proceed to administer and enforce the ordinance or resolution on behalf of the county as of the effective date of the ordinance or resolution. Upon a change in the rate of tax or upon the discontinuance of the tax, the county board of the county shall, on or not later than 5 days after the effective date of the ordinance or resolution discontinuing the tax or effecting a change in rate, transmit to the Department a certified copy of the ordinance or resolution effecting the change or discontinuance (Section 5-1035.1 of the Law). For purposes of determining which tax rate applies, the date of the sale is deemed to be the date of the delivery of the property.

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- 1) Heading of the Part: Income Tax
- 2) Code Citation: 86 Ill. Adm. Code 100
- 3) Section Numbers: Proposed Action:  
100.9710 New Section
- 4) Statutory Authority: 35 ILCS 5/1501(a)(8)
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking sets forth the definition of "financial organization" contained in Section 1501(a)(8) of the Illinois Income Tax Act. The rulemaking clarifies and provides standards for the application of the various terms in the statutory definition of "financial organization." The rulemaking that was developed is a cooperative effort between the Department and the business and practitioner community.
- 6) Will this proposed amendment replace an emergency rule currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this proposed amendment contain incorporations by reference? Yes
- 9) Are there any other proposed amendments pending of this Part? Yes

Section Numbers	Proposed Action	IL Register Citation
100.5130	Amendment	7/28/00, 24 Ill. Reg. 11189
100.2470	Amendment	8/04/00, 24 Ill. Reg. 11582
100.2330	Amendment	8/11/00, 24 Ill. Reg. 11778
100.9530	New Section	8/18/00, 24 Ill. Reg. 12445

- 10) Statement of Statewide Policy Objectives: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.

- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this notice to:

Keith Staats  
General Counsel  
Illinois Department of Revenue  
Legal Services Office  
101 West Jefferson  
Springfield, Illinois 62794  
217/782-7296

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- 12) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Any small business that could be characterized as a financial organization will benefit from the clarification of the statutory definition of "financial organization."
- B) Reporting, bookkeeping or other procedures required for compliance:  
None
- C) Types of professional skills necessary for compliance: None
- 13) Regulatory Agenda on which this rulemaking was summarized: July 2000
- The full text of the Proposed Amendments begins on the next page:



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NOTICE OF PROPOSED AMENDMENTS

TITLE 86: REVENUE  
CHAPTER I: DEPARTMENT OF REVENUE

PART 100  
INCOME TAX

SUBPART A: TAX IMPOSED

Section  
100.2000 Introduction  
100.2050 Net Income (IITA Section 202)

SUBPART B: CREDITS

Section  
100.2100 Replacement Tax Investment Credit Prior to January 1, 1994 (IITA 201(e))  
100.2101 Replacement Tax Investment Credit (IITA 201(e))  
100.2110 Investment Credit; Enterprise Zone (IITA 201(f))  
100.2120 Jobs Tax Credit; Enterprise Zone and Foreign Trade Zone or Sub-Zone (IITA 201(g))  
100.2130 Investment Credit; High Impact Business (IITA 201(h))  
100.2140 Credit Against Income Tax for Replacement Tax (IITA 201(i))  
100.2150 Training Expense Credit (IITA 201(j))  
100.2160 Research and Development Credit (IITA 201(k))  
100.2165 Education Expense Credit (IITA 201(m))  
100.2170 Tax Credits for Coal Research and Coal Utilization Equipment (IITA 206)  
100.2180 Credit for Residential Real Property Taxes (IITA 208)  
100.2195 Dependent Care Assistance Program Tax Credit (IITA 210)

SUBPART C: NET OPERATING LOSSES OF UNITARY BUSINESS GROUPS  
OCCURRING PRIOR TO DECEMBER 31, 1986

Section  
100.2200 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group (IITA Section 202) - Scope  
100.2210 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group (IITA Section 202) - Definitions  
100.2220 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group (IITA Section 202) - Current Net Operating Losses; Offsets Between Members  
100.2230 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group (IITA Section 202) - Carrybacks and Carryforwards

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100.2240 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group (IITA Section 202) - Effect of Combined Net Operating Loss in Computing Illinois Base Income  
100.2250 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group (IITA Section 202) - Deadline for Filing Claims Based on Net Operating Losses Carried Back From a Combined Apportionment Year

SUBPART D: ILLINOIS NET LOSS DEDUCTIONS OCCURRING ON OR AFTER  
DECEMBER 31, 1986

Section  
100.2300 Illinois Net Loss Deductions for Losses Occurring On or After December 31, 1986  
100.2310 Computation of the Illinois Net Loss Deduction  
100.2320 Determination of the Amount of Illinois Net Loss Carryovers  
100.2330 Illinois Net Loss Carrybacks and Net Loss Carryovers for Losses Occurring on or After December 31, 1986  
100.2340 Illinois Net Loss Deductions of Corporations That are Members of a Unitary Business Group: Separate Unitary Versus Combined Unitary Returns  
100.2350 Illinois Net Loss Deductions of Corporations that are Members of a Unitary Business Group: Changes in Membership

SUBPART E: ADDITIONS TO AND SUBTRACTIONS FROM TAXABLE INCOME OF INDIVIDUALS,  
CORPORATIONS, TRUSTS AND ESTATES AND PARTNERSHIPS

Section  
100.2470 Subtraction of Amounts Exempt from Taxation by Virtue of Illinois Law, the Illinois or U.S. Constitutions, or by Reason of U.S. Treaties or Statutes (IITA Sections 203(a)(2)(N), 203(b)(2)(J), 203(c)(2)(K) and 203(d)(2)(G))  
100.2480 Enterprise Zone Dividend Subtraction (IITA Sections 203(a)(2)(J), 203(b)(2)(K), 203(c)(2)(M) and 203(d)(2)(K))

SUBPART F: BASE INCOME OF INDIVIDUALS

Section  
100.2580 Medical Care Savings Accounts (IITA Sections 203(a)(2)(D-5), 203(a)(2)(S) and 203(a)(2)(T))  
100.2590 Taxation of Certain Employees of Railroads, Motor Carriers, Air Carriers and Water Carriers

SUBPART G: BASE INCOME OF TRUSTS AND ESTATES

Section

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100.2680 Capital Gain Income of Estates and Trusts Paid to or Permanently Set Aside for Charity (Repealed)

SUBPART I: GENERAL RULES OF ALLOCATION AND APPORTIONMENT OF  
BASE INCOME

Section  
100.3000 Terms Used in Article 3 (IITA Section 301)  
100.3010 Business and Nonbusiness Income (IITA Section 301)  
100.3020 Resident (IITA Section 301)

SUBPART J: COMPENSATION PAID TO NONRESIDENTS

Section  
100.3100 Compensation (IITA Section 302)  
100.3110 State (IITA Section 302)  
100.3120 Allocation of Compensation Paid to Nonresidents (IITA Section 302)

SUBPART K: NON-BUSINESS INCOME OF PERSONS OTHER THAN RESIDENTS

Section  
100.3200 Taxability in Other State (IITA Section 303)  
100.3210 Commercial Domicile (IITA Section 303)  
100.3220 Allocation of Certain Items of Nonbusiness Income by Persons Other than Residents (IITA Section 303)

SUBPART L: BUSINESS INCOME OF PERSONS OTHER THAN RESIDENTS

Section  
100.3300 Allocation and Apportionment of Base Income (IITA Section 304)  
100.3310 Business Income of Persons Other than Residents (IITA Section 304) - In General  
100.3320 Business Income of Persons Other Than Residents (IITA Section 304) - Apportionment  
100.3330 Business Income of Persons Other Than Residents (IITA Section 304) - Allocation  
100.3340 Business Income of Persons Other Than Residents (IITA Section 304)  
100.3350 Property Factor (IITA Section 304)  
100.3360 Payroll Factor (IITA Section 304)  
100.3370 Sales Factor (IITA Section 304)  
100.3380 Special Rules (IITA Section 304)  
100.3390 Petitions for Alternative Allocation or Apportionment (IITA Section 304(f))

SUBPART N: TIME AND PLACE FOR FILING RETURNS

Section  
100.5000 Time for Filing Returns: Individuals (IITA Section 505)

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100.5010 Place for Filing Returns: All Taxpayers (IITA Section 505)  
100.5020 Extensions of Time for Filing Returns: All Taxpayers (IITA Section 505)

100.5030 Taxpayer's Notification to the Department of Certain Federal Changes Arising in Federal Consolidated Return Years, and Arising in Certain Loss Carryback Years (IITA Section 506)

SUBPART O: COMPOSITE RETURNS

Section  
100.5100 Composite Returns: Eligibility  
100.5110 Composite Returns: Responsibilities of Authorized Agent  
100.5120 Composite Returns: Individual Liability  
100.5130 Composite Returns: Required forms and computation of Income  
100.5140 Composite Returns: Estimated Payments  
100.5150 Composite Returns: Tax, Penalties and Interest  
100.5160 Composite Returns: Credit for Resident Individuals  
100.5170 Composite Returns: Definition of a "Lloyd's Plan of Operation"

SUBPART P: COMBINED RETURNS

Section  
100.5200 Filing of Combined Returns  
100.5201 Definitions and Miscellaneous Provisions Relating to Combined Returns  
100.5205 Election to File a Combined Return  
100.5210 Procedures for Elective and Mandatory Filing of Combined Returns  
100.5220 Designated Agent for the Members  
100.5230 Combined Estimated Tax Payments  
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100.5250 Liability for Combined Tax, Penalty and Interest  
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100.5265 Common Taxable Year  
100.5270 Computation of Combined Net Income and Tax  
100.5280 Combined Return Issues Related to Audits

SUBPART Q: REQUIREMENT AND AMOUNT OF WITHHOLDING

Section  
100.7000 Requirement of Withholding (IITA Section 701)  
100.7010 Compensation Paid in this State (IITA Section 701)  
100.7020 Transacting Business Within this State (IITA Section 701)  
100.7030 Payments to Residents (IITA Section 701)  
100.7040 Employer Registration (IITA Section 701)  
100.7050 Computation of Amount Withheld (IITA Section 701)  
100.7060 Additional Withholding (IITA Section 701)  
100.7070 Voluntary Withholding (IITA Section 701)  
100.7080 Correction of Under withholding or Overwithholding (IITA Section 701)

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100.7090	701)	Reciprocal Agreement (IITA Section 701)
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		Withholding Exemption Certificate (IITA Section 702)
		Exempt Withholding Under Reciprocal Agreements (IITA Section 702)
	SUBPART S: INFORMATION STATEMENT	
		Reports for Employee (IITA Section 703)
		SUBPART T: EMPLOYER'S RETURN AND PAYMENT OF TAX WITHHELD
		Returns of Income Withheld from Wages (IITA Section 704)
		Quarterly Returns Filed on an Annual Basis (IITA Section 704)
		Time for Filing Returns (IITA Section 704)
		Payment of Tax Deducted and Withheld (IITA Section 704)
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		General Income Tax Procedures (IITA Section 901)
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	SUBPART V: NOTICE AND DEMAND	
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	SUBPART W: ASSESSMENT	
		Assessment (IITA Section 903)
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	SUBPART X: DEFICIENCIES AND OVERPAYMENTS	
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100.9330	Further Notices of Deficiency Restricted (IITA Section 906)
	SUBPART Y: CREDITS AND REFUNDS
	Credits and Refunds (IITA Section 909)
	Limitations on Claims for Refund (IITA Section 911)
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	SUBPART Z: INVESTIGATIONS AND HEARINGS
	Access to Books and Records (IITA Section 913)
	Access to Books and Records -- 60-Day Letters (IITA Section 913) (Repealed)
	Taxpayer Representation and Practice Requirements
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	SUBPART AA: JUDICIAL REVIEW
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	Unitary Business Group Defined (IITA Section 1501)
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	SUBPART CC: LETTER RULING PROCEDURES
	Letter Ruling Procedures
	APPENDIX A Business Income Of Persons Other Than Residents
	TABLE A Example of Unitary Business Apportionment
	TABLE B Example of Unitary Business Apportionment for Groups Which Include Members Using Three-Factor and Single-Factor Formulas
	AUTHORITY: Implementing the Illinois Income Tax Act [35 ILCS 5] and authorized by Section 1401 of the Illinois Income Tax Act [35 ILCS 5/1401].
	SOURCE: Filed July 14, 1971, effective July 24, 1971; amended at 2 Ill. Reg. 49 p. 84, effective November 29, 1978; amended at 5 Ill. Reg. 813, effective January 7, 1981; amended at 5 Ill. Reg. 4617, effective April 14, 1981; amended



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at 5 Ill. Reg. 4642, effective April 14, 1981; amended at 5 Ill. Reg. 5537, effective May 7, 1981; amended at 5 Ill. Reg. 5705, effective May 20, 1981; amended at 5 Ill. Reg. 5883, effective May 20, 1981; amended at 5 Ill. Reg. 6843, effective June 16, 1981; amended at 5 Ill. Reg. 13244, effective November 13, 1981; amended at 5 Ill. Reg. 13724, effective November 30, 1981; amended at 6 Ill. Reg. 579, effective December 29, 1981; amended at 6 Ill. Reg. 9701, effective July 26, 1982; amended at 7 Ill. Reg. 399, effective December 28, 1982; amended at 8 Ill. Reg. 6184, effective April 24, 1984; codified at 8 Ill. Reg. 19574; amended at 9 Ill. Reg. 16986, effective October 21, 1985; amended at 9 Ill. Reg. 685, effective December 31, 1985; amended at 10 Ill. Reg. 7913, effective April 28, 1986; amended at 10 Ill. Reg. 19512, effective November 3, 1986; amended at 10 Ill. Reg. 21941, effective December 15, 1986; amended at 11 Ill. Reg. 831, effective December 24, 1986; amended at 11 Ill. Reg. 2450, effective January 20, 1987; amended at 11 Ill. Reg. 12410, effective July 8, 1987; amended at 11 Ill. Reg. 17782, effective October 16, 1987; amended at 12 Ill. Reg. 4865, effective February 25, 1988; amended at 12 Ill. Reg. 6748, effective March 25, 1988; amended at 12 Ill. Reg. 11766, effective July 1, 1988; amended at 12 Ill. Reg. 14307, effective August 29, 1988; amended at 13 Ill. Reg. 8917, effective May 30, 1989; amended at 13 Ill. Reg. 10952, effective June 26, 1989; amended at 14 Ill. Reg. 4558, effective March 8, 1990; amended at 14 Ill. Reg. 6810, effective April 19, 1990; amended at 14 Ill. Reg. 10082, effective June 7, 1990; amended at 14 Ill. Reg. 16012, effective September 17, 1990; emergency amendment at 17 Ill. Reg. 473, effective December 22, 1992, for a maximum of 150 days; amended at 17 Ill. Reg. 8869, effective June 2, 1993; amended at 17 Ill. Reg. 13776, effective August 9, 1993; recodified at 17 Ill. Reg. 14189; amended at 17 Ill. Reg. 19632, effective November 1, 1993; amended at 17 Ill. Reg. 19966, effective November 9, 1993; amended at 18 Ill. Reg. 1510, effective January 13, 1994; amended at 18 Ill. Reg. 2494, effective January 28, 1994; amended at 18 Ill. Reg. 7768, effective May 4, 1994; amended at 19 Ill. Reg. 1839, effective February 6, 1995; amended at 19 Ill. Reg. 5824, effective March 31, 1995; emergency amendment at 20 Ill. Reg. 1616, effective January 9, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 6981, effective May 7, 1996; amended at 20 Ill. Reg. 10706, effective July 29, 1996; amended at 20 Ill. Reg. 13365, effective September 27, 1996; amended at 20 Ill. Reg. 14617, effective October 29, 1996; amended at 21 Ill. Reg. 958, effective January 6, 1997; emergency amendment at 21 Ill. Reg. 2969, effective February 24, 1997, for a maximum of 150 days; emergency expired July 24, 1997; amended at 21 Ill. Reg. 2234, effective January 9, 1998; amended at 22 Ill. Reg. 19033, effective October 1, 1998; amended at 22 Ill. Reg. 21623, effective December 15, 1998; amended at 22 Ill. Reg. 21623, effective December 15, 1998; amended at 23 Ill. Reg. 3808, effective March 11, 1999; amended at 24 Ill. Reg. 10593, effective July 7, 2000; amended at 24 Ill. Reg. 12068, effective July 26, 2000; amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART BB: DEFINITIONS

## Section 100.9710 Financial Organizations (IITA Section 1501)

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- a) General Definition. The term "financial organization" is defined in IITA Section 1501(a)(8)(A) to mean any bank, bank holding company, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, building and loan association, credit union, currency exchange, cooperative bank, small loan company, sales finance company, investment company, or any person which is owned by a bank or bank holding company. For the purpose of this Section a "person" will include only those persons which a bank holding company may acquire and hold an interest in, directly or indirectly, under the provisions of the Bank Holding Company Act of 1956 (12 USC 1841), except where interests in any person must be disposed of within certain required time limits under the Bank Holding Company Act of 1956. This definition constitutes an exclusive and exhaustive list of the types of organization which are "financial organizations" under the Illinois Income Tax Act.
- b1) Entities Engaged in Financial Organization Activities and Other Activities. For purposes of this Section, an entity that is classified as a "bank" under subsection (e) of this Section; as a "bank holding company" under subsection (f) of this Section; or as a person owned by a bank or bank holding company under subsection (g) of this Section, is a "financial organization" regardless of whether the entity is predominantly engaged in the business activities characteristic of a financial organization. In order for any other entity to be characterized as a "financial organization" in any tax year, the entity must be predominantly engaged in the business activities of a financial organization during the year. For this purpose, an entity engaged in business activities in the same tax year, is predominantly engaged in the business activities of a financial organization during that year only if more than 80% (50% in the case of a sales finance company under subsection (d)(10) of this Section) of the entity's gross income, averaged over a period of three years, which includes the current tax year and the immediately preceding two tax years, is derived from the business activities characteristic of one or more of the categories of financial organization defined in this Section for which the entity otherwise qualifies. For purposes of this subsection, gross income shall include only amounts that are received in the ordinary course of the entity's regular business activities and that are included in net income under the Illinois Income Tax Act. For purposes of determining whether an entity is predominantly engaged in the business activities of a financial organization when an entity is formed in a current tax year or in its immediately preceding tax year, only the years for which the entity is in existence will be used in determining whether the entity meets the 80% test (or 50% test in the case of a sales finance company under subsection (d)(10) of this Section).
- 1) Income which results from transactions outside the ordinary course of an entity's regular business activities is not taken

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into account for the purposes of the gross income test. For example, amounts received from the sale of an entity's headquarters shall be disregarded, whether or not the gain is characterized as business income.

- 2) The classification of an entity as a "financial organization" under the IITA is relevant to how the business income of the entity shall be apportioned to Illinois under IITA Section 304(c). The treatment of items of income that are not included in apportionable business income is not affected by such classification, and such items are therefore disregarded for purposes of the gross income test. For example, interest received on United States Treasury obligations is excluded from Illinois base income, and accordingly is disregarded for purposes of determining whether the business income of an entity should be apportioned using the financial organization formula. Similarly, dividends received by a corporation shall be disregarded to the extent the dividends are deducted from federal taxable income under Section 243 of the Internal Revenue Code or are subtracted in the computation of Illinois base income under IITA Section 203(b)(2)(i).

- 3) In the case of a sale or disposition of any asset (whether tangible or intangible, and whether the asset is part of the taxpayer's stock in trade) that occurs in the ordinary course of an entity's regular business activities, only the net gain shall be taken into account for purposes of the gross income test. Thus, for example, gross income from the sale of inventory is equal to its gross receipts minus the cost of goods sold; while gross income from the sale of stock is equal to the sales price minus any brokerage commission and minus the taxpayer's basis in the stock. If gross income from a transaction is negative, the loss shall not be considered for purposes of the gross income test.

- 4) Leasing Activities. For purposes of the IITA and the Internal Revenue Code, a "finance lease" is treated as an extension of credit, rather than as a true lease. In a finance lease, the lessor is treated as a creditor, and the lessee is treated as the owner of the leased asset entitled to any deduction for depreciation allowed under Section 167 of the Internal Revenue Code. For purposes of this Section, a finance lease shall be treated as a loan or other extension of credit, rather than as a lease, regardless of how the transaction is characterized for any other purpose, including the purposes of any regulatory agency to which the lessor is subject.

- 5) In applying the gross income test to an entity engaged in the businesses of more than one of the types of organization defined in subsection (d) of this Section, "gross income from financial services" shall include gross income derived from all services characteristic of any specific defined type of organization for

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which the entity qualifies. For example:

- A) Selling and exchanging currency is a characteristic service only of banks. Accordingly, "gross income from financial services" of an entity which qualifies as a bank under subsection (d)(1) of this Section, and as a safe deposit company under subsection (d)(6) of this Section, includes both income from trading in foreign currency and safe deposit box rentals. However, "gross income from financial services" of an entity which qualifies as a safe deposit company, but not as a bank, does not include income from trading in foreign currency.

- B) A taxpayer that meets all other qualifications of a sales finance company and also of a small loan company, and that derives 40% of its gross income from transactions characteristic of a sales finance company and 35% of its gross income from transactions characteristic of a small loan company is not a financial organization because it does not meet either the 50% test for sales finance companies nor the 80% test applicable to other types of financial organization. If, however, the taxpayer derives 45% of its gross income from transactions characteristic of a sales finance company and 36% of its gross income from transactions characteristic of a small loan company, it would not be a sales finance company because it does not meet the 50% test, but it would be a financial organization under the 80% test.

- 6) IITA Section 1501(a)(8)(D) provides that an entity that is a "financial organization" that engages in any transaction with an affiliate shall be a "financial organization" for all purposes of the Act. Accordingly, in applying the gross income test, an entity's transactions with a person to which it is related (including transactions with a member of the entity's unitary business group which are eliminated in combination under Section 100.3320(d) of this Part) shall be treated in the same manner as transactions between the entity and an unrelated person, subject in all cases to the authority of the Department under IITA Section 404 to make such adjustments as are necessary to properly reflect each party's Illinois business activities.

- c) Some of the types of organizations listed in subsection (a) of this Section are defined by State or federal statutes. The remaining types of organization are terms frequently used in other states' laws to refer to entities engaged in the same businesses as the entities in one or more of the types defined in Illinois or federal law. An entity defined as a bank or a bank holding company, or that is owned by a bank or bank holding company, under subsection (e), (f) or (g) of this Section, is a financial organization regardless of its actual business activities. For any other entity, notwithstanding the title or characterization of the entity for purposes of any other law, the



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entity is a "financial organization" for purposes of the IFTA only if that entity is predominantly engaged in a business which is identical in all material respects to the characteristic business of an entity within one or more of the types of organization defined in Illinois or federal law. In order for an entity's business to be identical in all material respects to the business of one of the defined types of organization, the entity must:

- 1) provide substantially all of the characteristic services provided by entities in the defined type of organization; and
  - 2) be subject to regulation by the Illinois or federal agency (if any) with authority over entities in the defined type of organization or by the equivalent authority (if any) established under the laws of the entity's state or country of formation or of its commercial domicile. However, "sales finance companies," as defined in subsections (d)(10)(A) and (B) of this Section are not required to be regulated by any state or federal authority.
- d) Application lists the types of financial organization. This subsection lists the types of financial organization defined in Illinois or federal law and describes the characteristic business of each type as provided in the relevant Illinois or federal statutes. The references to Illinois State and federal statutes and authorities in this subsection shall be construed to refer to any predecessor to the current statute or authority, whenever appropriate.

- 1) Entities engaged in the business of a "bank." The term "bank" includes any entity described in subsection (e) of this Section. In addition, for purposes of categorizing an entity that does not come within the scope of subsection (e) of this Section, the term "bank" means an entity predominantly engaged in the business activities characteristic of an entity which has been issued a charter by the Commissioner of Banks and Real Estate under 205 ILCS 5/13 or that has been given a certificate of authority to commence banking by the Comptroller of the Currency under 12 USC Section 27. The terms "savings bank," "industrial bank" and "cooperative bank" are sometimes used in the laws of other states to refer to entities engaged in the same business as a "bank" as defined in Illinois or federal law. The term "private banker" means an unincorporated bank, conducted as a partnership of individuals or as an individual proprietorship. Notwithstanding that an entity does or does not come within the meaning of any of these terms for any other purpose, the determination of whether an entity is engaged in the business of a "bank" for purposes of the IFTA shall be made pursuant to the following standards:

- A) Characteristic Services. The Illinois and federal statutes providing for the formation of banks state that the characteristic activities of banks are accepting deposits, making loans, discounting evidences of debt, and buying and selling exchange. (See 205 ILCS 5/3; 12 USC 24; and Section 591 of the Internal Revenue Code.) In order to be engaged

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in a business identical in all material respects to the business of a "bank," an entity formed under the laws of another state or of a foreign country as a bank, savings bank, industrial bank, or cooperative bank must engage in each of these characteristic financial services of a bank. Thus, for example, an entity that does not accept deposits is not engaged in the business of a bank. For purposes of applying the 80% of gross income test in subsection (b) of this Section, examples of gross income from characteristic services of a bank include:

- i) application and origination fees, points, interest, late payment fees and other charges received in connection with loans or with commitments to make loans or provide other credits;
- ii) service charges and early withdrawal or other penalties received in connection with deposit accounts;
- iii) fees and gains realized from buying and selling exchange, including foreign currency;
- iv) loan servicing fees and charges received in connection with syndicated loans or loans sold to third parties; and
- v) discounts and gains realized on the purchase or resale of loans.

Examples of items of income that are not gross income from the characteristic services of a bank include rental income from real estate; gains from sale of property obtained in foreclosure or settlement of loans; and interest and dividends received from, and gains realized on the sale or exchange of, securities.

- B) Regulation. Illinois State banks are subject to regulation by the Commissioner of Banks and Real Estate (see 205 ILCS 5/48), while national banks are subject to regulation by the Comptroller of the Currency (see 12 USC 27(b)(2)). These entities qualify as banks under subsection (e) of this Section regardless of their business activities. In order to qualify as a bank, an entity that is not a bank within the meaning of subsection (e) of this Section must be regulated by the authority (if any) equivalent to the Commissioner of Banks and Real Estate or the Comptroller of the Currency having regulatory jurisdiction within the entity's state or country of formation or commercial domicile.

- 2) Entities engaged in the business of a "trust company." The term "trust company" means a corporation organized under the laws of the State of Illinois for the purpose of accepting and executing trusts [205 ILCS 620/1-5.11], and that has received a certificate of authority to accept trusts from the Commissioner of Banks and



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Real Estate under 205 ILCS 620/2-4.

A) Characteristic Services. A trustee performs services as a fiduciary on behalf of the trust's beneficiaries. A trustee is entitled to compensation for expenses incurred on behalf of the trust and to reasonable compensation for services rendered (see 760 ILCS 5/7). Under Illinois law, a trustee may continue an unincorporated business on behalf of the trust in certain circumstances (see 760 ILCS 5/4.23 and 4.24). A trustee may act as an advisor or manager of a mutual fund in which trust funds are invested, without having to reduce or waive its compensation for such services when provided to a trust (see 760 ILCS 5/5.2). However, the trustee is not entitled to any profit from any business it conducts on behalf of a trust or beneficiary, but only to compensation for services rendered to the trust. Accordingly, the gross income from characteristic services of a trust company shall include only trustees' fees or other compensation receivable for services rendered as a trustee on behalf of trusts. Amounts received for services provided other than as a trustee, such as fees received as an advisor or manager of a mutual fund in which trust funds are invested, are not gross income from characteristic services of a trust company.

B) Regulation. A trust company conducting business within Illinois is subject to the Corporate Fiduciary Act [205 ILCS 620]. Some types of regulated entities, such as national banks, are authorized by law to engage in trust activities (see 12 USC 92a). Any entity operating in any other state must be licensed or subject to regulation by any equivalent authority in that state.

3) Entities engaged in the business of a "savings bank." The term "savings bank" means a taxpayer which is predominantly engaged in the business of an entity that is either chartered as a federal savings bank under the Home Owners' Loan Act (12 USC 1462 and 1464(a)) and whose investments comply with the guidelines of 12 USC 1464(c) or of an entity which has been issued a certificate of organization by the Commissioner of Savings and Loan Associations under the Savings Bank Act [205 ILCS 205/3007] and that, as required by 205 ILCS 205/1009, maintains at least 60% of its total assets in qualifying "domestic savings and loan association" assets described in Section 7701(a)(19) of the Internal Revenue Code. The qualifying assets listed in Section 7701(a)(19) are cash, federal and municipal obligations, loans secured by deposits or shares in the lender, residential real estate loans, educational loans, and related investments. The terms "bank," "savings and loan association," "building and loan association," "industrial bank" and "cooperative bank" are sometimes used in the laws of other states to refer to entities

engaged in the same business as a "savings bank" as defined in Illinois or federal law. Notwithstanding that an entity does or does not come within the meaning of any of these terms for any other purpose, the determination of whether the entity is engaged in the business of a "savings bank" for purposes of the IITA shall be made pursuant to the following standards:

A) Characteristic Services. The business of a savings bank consists principally of acquiring the savings of the public and investing in loans (Section 7701(a)(19)(B) of the Internal Revenue Code). In general, qualifying loans are related to residential real estate. An entity that does not take deposits from the public and invest the deposited funds primarily in qualifying loans to the public is not a savings bank for purposes of the IITA. For purposes of applying the 80% of gross income test in subsection (b) of this Section, examples of gross income from characteristic services of a savings bank include:

- i) application and origination fees, points, interest, late payment fees and other charges received in connection with loans or with commitments to make loans or provide other credits;
- ii) service charges and early withdrawal or other penalties received in connection with deposit accounts;
- iii) loan servicing fees and charges received in connection with syndicated loans or loans sold to third parties; and
- iv) discounts and gains realized on the purchase or resale of loans.

Examples of items of income that are not gross income from the characteristic services of a savings bank include rental income from real estate; gains from sale of property obtained in foreclosure or settlement of loans; interest and dividends received from, and gains realized on the sale or exchange of, securities.

B) Regulation. No entity is a savings bank for purposes of the IITA unless it is subject to regulation by the Commissioner of Banks and Real Estate under the Savings Bank Act [205 ILCS 205/1003], the Office of Thrift Supervision (12 USC 1461), or the appropriate authority of another state responsible for regulating savings banks.

4) Entities engaged in the business of a "land bank." The term "land bank" was defined in federal law to mean a federally chartered association organized to make loans on farm security at low interest rates as governed by 12 USC, ch. 23 (Farm Credit System). Under the Agricultural Credit Act of 1987 (P.L. 100-233), the federal land banks were merged with the Federal Intermediate Credit Banks which had also been created under the

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Farm Credit System. Under current law, the surviving entities are exempt from state income taxation (see 12 USC 2098).

A) Characteristic Services. Congress established the federal land banks as cooperatives to encourage farmer and rancher ownership and control over a system of credit for agriculture. The characteristic service of a land bank is making loans to farmers. Gross income from characteristic services of a land bank include application and origination fees, points, interest, late payment fees and other charges received in connection with loans to farmers and ranchers.

B) Regulation. Federal land banks are not subject to Illinois taxation. A land bank that was not created under federal statute must be subject to any regulation by any authority equivalent to the Farm Credit System regulation as may exist in the state or country of incorporation or commercial domicile of the land bank.

5) Entities engaged in the business of a "safe deposit company." The term "safe deposit company" means an entity licensed by the Department of Financial Institutions under the Safety Deposit License Act [240 ILCS 5/22] to engage in the business of renting or permitting the use of, for compensation, safety deposit boxes, safes, vaults or other facilities for the safekeeping of personal property (see 240 ILCS 5/2). The Safety Deposit License Act does not apply to banks, savings and loans, credit unions, warehouses, or grain storage companies (see 240 ILCS 5/3).

A) Characteristic Services. A safe deposit company provides facilities for the safekeeping of personal property in safes or vaults, as compared to warehouses. Gross income from the characteristic services of a safe deposit company includes rental income or similar charges for safe deposit boxes.

B) Regulation. Safe deposit companies doing business in Illinois must be licensed by the Department of Financial Institutions. An entity operating in any other state must be licensed or subject to regulation by any equivalent authority in that state.

6) Entities engaged in the business of a "savings and loan association." The term "savings and loan association" means a federal savings and loan association chartered under the Home Owners' Loan Act of 1933 (12 USC 1462 and 1464(a)) whose investments comply with the guidelines of 12 USC 1464(c) or a savings and loan association organized under the Illinois Savings and Loan Act of 1985 (205 ILCS 105/2-6) and whose investments comply with the requirements of 205 ILCS 105/5-1 through 5-16. In particular, 205 ILCS 105/5-3 provides that savings and loan associations must generally make their assets available to make loans to their members secured by the members' shares or for residential real estate purchase, construction and related matters under 205 ILCS 105/5-2. The Internal Revenue Code

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provides special rules for savings and loan associations, which are defined in Section 7701(a)(19) of the Internal Revenue Code as depository institutions that invest at least 60% of their assets in cash, federal and municipal obligations, loans secured by deposits or shares in the lender, residential real estate loans, educational loans, and related investments. The terms "bank," "savings bank," "building and loan association," and "cooperative bank" are sometimes used in the laws of other states or of other countries to refer to entities engaged in the same business as a "savings and loan association" as defined in Illinois or federal law. Notwithstanding that an entity does or does not come within the meaning of any of these terms for any other purpose, the determination of whether the entity is engaged in the business of a "savings and loan association" for purposes of the IITA shall be made pursuant to the following standards:

A) Characteristic Services. The business of a savings and loan association consists principally of acquiring the savings of the public and investing in loans (Section 7701(a)(19)(B) of the Internal Revenue Code). An entity that does not take deposits and invest primarily in qualifying loans is not a savings and loan association for purposes of the IITA. For purposes of applying the gross income test in subsection (b) of this Section, examples of gross income from characteristic services of a savings and loan association include:

- i) application and origination fees, points, interest, late payment fees and other charges received in connection with loans or with commitments to make loans or provide other credits;
- ii) service charges and early withdrawal or other penalties received in connection with deposit accounts;
- iii) loan servicing fees and charges received in connection with syndicated loans or loans sold to third parties; and
- iv) discounts and gains realized on the purchase or resale of loans.

Examples of items of income that are not gross income from the characteristic services of a savings and loan association include rental income from real estate; gains from sale of property obtained in foreclosure or settlement of loans; interest and dividends received from, and gains realized on the sale or exchange of, securities.

B) Regulation. No entity is a savings and loan association for purposes of the IITA unless it is subject to regulation by the Office of Banks and Real Estate under the Savings Bank Act [205 ILCS 105/7-1], the Office of Thrift Supervision (12 USC 1462), or the appropriate authority (if any) of another



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state responsible for regulating savings and loan associations.

- 7) Entities engaged in the business of a "credit union." Federal credit unions that have received a charter under 12 USC 1754 are exempt from state income taxation (see 12 USC 1768). Under present law, only "cooperative, non-profit" credit unions may be incorporated under the Illinois Credit Union Act or permitted to do business in Illinois (see 205 ILCS 305/1.1 (defining "credit union") and 7 (permitting credit unions chartered in other states to do business in Illinois)). Under current law, a credit union doing business in Illinois is most likely exempt from Illinois Income Tax pursuant to IITA Section 205(a) and 12 USC 501(a) and (c)(14). 12 USC 1753(5) and 205 ILCS 305/2(2)(b) each require an entity applying for permission to organize as a credit union to define the class of persons entitled to membership.

A) Characteristic Services. 12 USC 1752(a)(1) provides that a federal credit union is a cooperative association organized for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes and 12 USC 1757(7) requires a federal credit union to invest its funds in loans to its members, bank accounts, government securities and in other credit unions. 205 ILCS 305/1.1 defines "credit union" to mean a cooperative, non-profit association, incorporated for the purposes of encouraging thrift, creating a source of credit at a reasonable rate of interest, and providing an opportunity for its members to use and control their own money in order to improve their economic and social conditions, and 205 ILCS 305/59 allows credit unions to invest only in loans to members, bank accounts, government securities and other credit unions. The characteristic services of a credit union involve taking interest-paying deposits from its members and making loans to its members. For purposes of applying the gross income test in subsection (b) of this Section, examples of gross income from characteristic services of a credit union include:

- i) application and origination fees, points, interest, late payment fees and other charges received in connection with loans or with commitments to make loans to members; and
- ii) service charges and early withdrawal or other penalties received in connection with deposit accounts.

Examples of items of income that are not gross income from the characteristic services of a credit union include interest and other income from loans to non-members; rental income from real estate; gains from sale of property obtained in foreclosure or settlement of loans; interest and

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dividends received from, and gains realized on the sale or exchange of, securities.

- B) Regulation. In order for an entity to qualify as a credit union, an entity must be subject to regulation by any appropriate authority in the state of organization, and the class of persons entitled to membership in the entity must be defined by law or approved by the appropriate state authority.

- 8) Entities engaged in the business of a "currency exchange." The term "currency exchange" means an entity licensed by the Director of Financial Institutions under the Currency Exchange Act [205 ILCS 405/4] for purposes of engaging in the business of, and providing facilities for, cashing checks, drafts, money orders or any other evidences of money for a consideration or selling or issuing money orders in the entity's own name [205 ILCS 405/1].

- A) Characteristic Services. Currency exchanges cash checks and other evidences of money for the general public, and may issue money orders. Currency exchanges are not permitted to accept any form of deposit or bailment of money (see 205 ILCS 405/3). The gross income from characteristic services of a currency exchange is the fees or other charges for cashing checks or issuing money orders. Interest or other income earned from investment of funds received from the issuance of money orders during the period between the issuance of a money order and its clearance is not gross income from a characteristic service of a currency exchange. Regulation. A currency exchange doing business in Illinois must be licensed by the Director of Financial Institutions and meet certain bonding requirements to protect its customers. An entity operating in any other state must be licensed or subject to regulation by any equivalent authority in that state.

- 9) Entities engaged in the business of a "small loan company." The term "small loan company" means an entity licensed by the Director of Financial Institutions under the Consumer Installment Loan Act [205 ILCS 670/1] for the purpose of making loans in a principal amount not exceeding \$25,000. Small loan companies are required to disclose the terms of their loans pursuant to specific statutory requirements or in conformity with the federal Truth in Lending Act (see 205 ILCS 670/16 (referencing 15 USC 1601)). The predecessor of the Consumer Installment Loan Act, the Small Loans Act (Ill. Rev. Stat., ch. 74, par. 27 (1933)), was held to apply only to lenders, and not to persons selling goods or services on a credit or installment basis. (See, e.g., *Wernick v. National Bond and Investment Co.*, 276 Ill. App. 84 (1934).)

- A) Characteristic Services. Small loan companies are permitted to make loans not exceeding an aggregate principal amount of



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\$25,000 to any obligor and for terms not exceeding 121 months. A credit or installment sale of goods or services is not a characteristic service of a small loan company. Gross income from the provision of the characteristic services of a small loan company includes loan application and origination fees, interest, late payment charges and similar amounts realized in connection with loans not exceeding the principal amount of \$25,000 and for terms not exceeding 121 months. Amounts received or accrued in connection with any loan for a principal amount in excess of \$25,000 or for a term in excess of 121 months are not gross income from the provision of the characteristic services of a small loan company. Finally, because 205 ILCS 670/21 provides that the Consumer Installment Loan Act does not apply to persons making loans to business associations or corporations, or to sole proprietors of businesses for the purpose of carrying on or acquiring such businesses, amounts received in connection with such business loans are not gross income from the provision of the characteristic services of a small loan company.

B) Regulation. A small loan company operating in Illinois must be licensed by the Director of Financial Institutions. An entity operating in any other state must be licensed or subject to regulation by any equivalent authority in that state. In all cases, the entity must comply with the regulations issued by the Board of Governors of the Federal Reserve System under the Truth in Lending Act.

10) Entities engaged in the business of a "sales finance company." The term "sales finance company" has the meaning provided in subsection (d)(10)(A) or (B):

A) Order IITA Section 1501(a)(8)(C)(i), the term "sales finance company" means an entity primarily engaged in one or more of the following businesses: the business of purchasing customer receivables, the business of making loans upon the security of customer receivables, the business of making loans for the express purpose of funding purchases of tangible personal property or services by the borrower, or the business of finance leasing. For purposes of this subsection (d)(10)(A), a "customer receivable" means:

i) A retail installment contract or retail charge agreement within the meaning of the Sales Finance Agency Act [205 ILCS 660/2], the Retail Installment Sales Act [815 ILCS 405/2.6 and 2.7], or the Motor Vehicle Retail Installment Sales Act [815 ILCS 375/2.5].

ii) An installment, charge, or similar contract or agreement arising from the sale of tangible personal property or services in a transaction involving a

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deferred payment price payable in one or more installments subsequent to the sale;

iii) The outstanding balance of a contract or agreement described in subsection (d)(10)(A)(i) or (ii) of this Section; or

iv) A loan, or balance under a loan, made by a lender for the express purpose of funding purchases of tangible personal property or services by the borrower.

A customer receivable need not provide for payment of interest on deferred payments. A sales finance company may purchase a customer receivable from, or make a loan secured by a customer receivable to, the seller or lender in the original transaction or from or to a person who purchased the customer receivable directly or indirectly from that seller or lender.

Example 1: A manufacturer sells a product to a retailer. Payment is due 7 days after issuing the sales invoice. An account receivable is recorded when the invoice is issued. The receivable would constitute a customer receivable.

Example 2: An entity purchases or otherwise acquires customer receivables or finance leases. The entity sells those customer receivables or finance leases to a third party and enters into an agreement to service such receivables or finance leases in exchange for a fee. The purchase, sale and/or servicing of such receivables or finance leases is a business of a "sales finance company." Under IITA Section 1501(a)(8)(C)(ii), the term "sales finance company" also means a corporation meeting each of the following criteria:

i) The corporation must be a member of an "affiliated group" within the meaning of Section 1504(a) of the Internal Revenue Code, determined without regard to Section 1504(b) of the Internal Revenue Code;

ii) More than 50% of the gross income of the corporation for the taxable year must be interest income derived from qualifying loans. A "qualifying loan" is a loan made to a member of the corporation's affiliated group that originates customer receivables or to whom customer receivables originated by a member of the affiliated group have been transferred, to the extent the average outstanding balance of loans from that corporation to members of its affiliated group during the taxable year do not exceed the limitation amount for that corporation. The "limitation amount" for a corporation is the average outstanding balances during the taxable year of customer receivables originated by all members of the affiliated group. If the average outstanding balances of the loans made by a

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corporation to members of its affiliated group exceed the limitation amount, the interest income of that corporation from qualifying loans shall be equal to its interest income from loans to members of its affiliated group times a fraction equal to the limitation amount divided by the average outstanding balances of the loans made by that corporation to members of its affiliated group.

iii) The total of all shareholder's equity (including, without limitation, paid-in capital on common and preferred stock and retained earnings) of the corporation plus the total of all of its loans, advances, and other obligations payable or owed to members of its affiliated group may not exceed 20% of the total assets of the corporation at any time during the tax year; and

iv) More than 50% of all interest-bearing obligations of the affiliated group payable to persons outside the group determined in accordance with generally accepted accounting principles must be obligations of the corporation.

Example 3: In connection with the conduct of its business, A Corporation either originates customer receivables (as defined in subsection (d)(10)(A) of this Section), or is transferred customer receivables from one or more of its affiliates. B Corporation, a wholly-owned subsidiary of A and a member of its affiliated group, conducts business exclusively in State X, its commercial domicile. B issues commercial paper and other debt obligations and uses the proceeds to make loans to A or other members of the affiliated group. B Corporation derives more than 50% of its gross income from interest on making "qualifying loans" to A or other members of the affiliated group. Assuming B also meets the tests in subsections (d)(10)(B)(iii) and (iv) of this Section, B would constitute a "sales finance company" as defined in IITA Section 1501(a)(8)(C)(ii). Characteristic Services. A "sales finance company" is defined by its characteristic services in subsections (d)(10)(A) and (B) of this Section. A company satisfies the primary test of subsection (d)(10)(A) of this Section if more than 50% of its gross income is from its characteristic services.

D) Regulation. There is no requirement that a sales finance company that meets the definition provided in subsection (d)(10)(A) or (B) of this Section be subject to license or regulation by any state or federal authority.

11) Entities engaged in the business of an "investment company." [Reserved]

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e) The term "bank" includes the following entities, regardless of whether the entity is engaged in the characteristic business of a bank as described in subsection (d)(1) of this Section. An entity described in this subsection (e) is a bank even if it qualifies as a financial organization under one of the provisions of subsection (d) of this Section:

1) any entity that is regulated by the Comptroller of the Currency under the National Bank Act, or by the Federal Reserve Board, or by the Federal Deposit Insurance Corporation.

A) An "entity regulated by the Comptroller of the Currency under the National Bank Act" means a national banking association formed under 12 USC 21.

B) An "entity regulated by the Federal Reserve Board" means a member of the Federal Reserve System under the provisions of 12 USC 222 or 12 USC 321.

C) An "entity regulated by the Federal Deposit Insurance Corporation" means an insured depository institution under 12 USC 1814.

2) any federally or State chartered bank operating as a credit card bank. A "credit card bank" is the common term for an entity that comes within the definition of "bank" for purposes of the Bank Holding Company Act of 1956 (12 USC 1841(c)(1)), but which is excluded from being treated as a bank under 12 USC 1841(c)(2)(F).

f) Entities engaged in the business of a "bank holding company." The term "bank holding company" means an entity that directly or indirectly owns, controls or has power to vote 25% or more of any class of voting securities of any bank or of any other bank holding company (see 12 USC 1841(a)), and which is registered with the Board of Governors of the Federal Reserve System under Section 1844(a) of the Bank Holding Company Act of 1956 (12 USC 1844(a)).

g) Special Rule for Persons Owned by a Bank or Bank Holding Company. The term "financial organization" under the Illinois Income Tax Act includes any person that is owned by a bank (within the meaning of subsection (d)(1) of this Section or subsection (e) of this Section) or by a bank holding company (within the meaning of subsection (f) of this Section). For purposes of this provision, the term "person" includes only those persons in which a bank holding company may acquire and hold an interest, directly or indirectly, under the provisions of the Bank Holding Company Act of 1956 (12 USC 1841) and Regulation Y promulgated thereunder by the Board of Governors of the Federal Reserve System (12 CFR 225), and does not include any person that must be disposed of within certain required time limits under the Bank Holding Company Act of 1956. Under this provision, an entity that would not otherwise be a "financial organization" is deemed to be a financial organization for any period during which it is owned by a bank or bank holding company. For example, prior to the enactment of Public Law 106-102, 12 USC 1843(c)(8) authorized bank holding companies to own insurance companies in certain circumstances. 12 USC



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1843(c)(8) allows a bank holding company that owned an insurance company prior to November 12, 1999, to continue to own that insurance company. An insurance company owned by a bank holding company is a "financial organization" for purposes of the IITA, even though the insurance company would not otherwise be a financial organization. The fact that an entity that is not owned by a bank holding company would be a financial organization under this provision if it were owned by a bank holding company, or that the entity in the past may have been owned by a bank holding company and therefore characterized as a financial organization, is irrelevant to the determination of whether the entity is a financial organization.

n) Effective dates and elections. Public Act 89-711 amended the definition of "financial organization" in IITA Section 1501(a)(8) by adding the definition of "bank" in IITA Section 1501(a)(8)(B) and the definition of "sales finance company" in IITA Section 1501(a)(8)(C).

1) Application of IITA Section 1501(a)(8) to taxable years beginning on or before December 31, 1996. The General Assembly declared in IITA Section 1501(a)(8)(D) that the definitions of the terms "bank" and "sales finance company" in IITA Sections 1501(a)(8)(B) and (C) are declaratory of existing law and apply retroactively for all tax years beginning on or before December 31, 1996. No other definitions were changed. Accordingly, except as provided in this subsection (h), the interpretations of the statutory definitions contained in subsections (a) through (q) apply retroactively and for all purposes to all taxable years.

2) For taxable years beginning on or before December 31, 1996, Public Act 89-711 provides that the definitions of "bank" and "sales finance company" shall apply to all original returns; to all amended returns filed within 30 days after the effective date of the Act; to all math error notices issued by the Department under IITA Section 903(a); to all Notices of Deficiency issued by the Department under IITA Section 904(a); to all notices of denial of refund claims issued under IITA Section 909(e); and to all assessments of erroneous refunds made under IITA Section 912.

A) Public Act 89-711 imposes no time limit for the filing of an original return applying its provisions to taxable years beginning on or prior to December 31, 1996. Accordingly, taxpayers may file original returns claiming financial organization status under the amended definitions of "bank" and "sales finance company" at any time, provided that such returns are filed within the applicable statute of limitations period and meet all other relevant requirements of the IITA.

B) Taxpayers required to file amended returns in order to claim financial organization status for a taxable year beginning on or prior to December 31, 1996, were required to do so on or before March 17, 1997, which was 30 days after the enactment of Public Act 89-711.

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C) In the case of a taxpayer that had claimed financial organization status on an original or amended return and whose status as a financial organization was denied by the Department, IITA Section 1501(a)(8)(D) provides that the amended definitions of "bank" and "sales finance company" apply to the Notice of Deficiency or notice of denial of refund claim issued by the Department after review of such return.

i) If the Notice of Deficiency or notice of denial has not become final, a taxpayer with a matter pending before the Office of Administrative Hearings of the Illinois Department of Revenue for a particular taxable year may raise as an issue the taxpayer's status as a "bank" or "sales finance company" by the making of a motion in conformance with the rules on motion practice as set forth in 86 Ill. Adm. Code 200.185.

ii) If the Notice of Deficiency or notice of denial has become final, and the taxpayer is not contesting the Department's action in the courts under the Administrative Review Law [735 ILCS 5/Art. III] or the State Officers and Employees Money Disposition Act [30 ILCS 230], the taxpayer must have filed a timely amended return as set forth in subsection (b)(2)(B) of this Section in order to assert a claim that it qualifies as a "bank" or "sales finance company" under the amended definitions.

iii) A taxpayer with a matter pending before the courts of this State for a particular taxable year must request treatment as a "bank" or "sales finance company" by the making of a motion in conformance with the rules of the court.

3) Election under IITA Section 1501(a)(8)(E). IITA Section 1501(a)(8)(E) provides that, for all taxable years beginning on or before December 31, 1996, a taxpayer that falls within the definition of a "financial organization" under Section 1501(a)(8)(B) or (C) of the IITA, but who does not fall within the definition of a "financial organization" under the Proposed Regulations issued by the Department of Revenue on July 19, 1996 (20 Ill. Reg. 9488) may irrevocably elect to apply the Proposed Regulations for all of those years as though the Proposed Regulations had been lawfully promulgated, adopted, and in effect for all of those years.

A) In order to support a claim for refund, the election must have been filed by March 17, 1997. Procedures for making an election which would support a claim for refund were published in Emergency Rule 100.9710 (21 Ill. Reg. 2969).

B) A taxpayer who has filed an original or amended return for



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any taxable year beginning on or before December 31, 1996, as a non-financial organization and that wishes to elect to be bound by the July 19, 1996, proposed rules solely for the purpose of preserving its return position, and not for purposes of claiming a refund for any year, may file an election document meeting the following requirements:

- i) The election document must state on the first page "Financial Organization Election to Apply Proposed Rules Under Public Act 89-711 -- No Refund Claim."
  - ii) The election document must be filed prior to the issuance of any Notice of Deficiency or notice of claim denial that is based in whole or in part on the retroactive application of Public Act 89-711 to treat the taxpayer as a financial organization.
  - iii) The election document must list all members of the unitary business group to whom the election applies. The election shall be binding on all such members, whether or not listed, and the Department may enforce such election against such members. In addition, no refund claimed after the effective date of Public Act 89-711 shall be allowed to the extent such refund results from the application of the July 19, 1996, proposed rules to any such member.
- C) All elections to apply the July 19, 1996, proposed rules, whether made by amended return or by an election document, shall be sent to the following address:

Deputy General Counsel - Income Tax  
Legal Services Office - Room 5-500  
Illinois Department of Revenue  
P.O. Box 19014  
Springfield, Illinois 62794-9014

## D) Effect of election.

- i) Effect on "banks" as defined in IITA Section 1501(a)(8)(B). Public Act 89-711 expanded the definition of the term "bank" to include entities described in subsection (e) of this Section, without regard to the actual business activities of the entity. A taxpayer governed by an election under this subsection (h) must be engaged in the business of a "bank" as described in subsection (d)(1) of this Section in order to be characterized as a bank. For example, under IITA Section 1501(a)(8)(B), a "credit card bank" is characterized as a "bank" even though a credit card bank is prohibited from accepting deposits from the public. A credit card bank governed by an election under this subsection (h) therefore cannot be

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a "bank" under subsection (d)(1) of this Section. Note, however, that a credit card bank governed by such an election may qualify as a financial organization under some other provision of this Section; in particular, a credit card bank may be engaged in the business of a sales finance company as defined in subsection (1)(3)(D)(ii) of this Section.

- ii) Effect on "sales finance companies" as defined in IITA Section 1501(a)(8)(C). Public Act 89-711 expanded the definition of "sales finance company" to include entities that buy, or make loans secured by, installment agreements or charge agreements of corporations and businesses and to include entities which are primarily engaged in the business of a sales finance company. An entity governed by an election under this subsection (h) will be a sales finance company only if: it is engaged in the business of buying, or making loans secured by, installment agreements and charge agreements arising from retail purchases for personal, family or household use; more than 80% of its gross income is derived from transactions characteristic of a financial organization; and it meets the other requirements of subsection (d)(10) of this Section.
- iii) An election made under Section 1501(a)(8)(E) applies only to taxable years beginning on or before December 31, 1996. For all subsequent taxable years, the provisions of Section 1501(a)(8) as amended in Public Act 89-711 and interpreted in subsections (a) through (h) of this Section shall apply.
- iv) Section 1501(a)(8)(E) provides that the election applies to those members of the taxpayer's unitary business group who are ordinarily required to apportion business income under the same subsection of Section 304 of the IITA. An election made by one or more such members is binding on all such members, whether or not they expressly joined in the election, and the Department may enforce such election either directly or by offsetting any refund payable to the taxpayer as the result of the election by any underpayment of any other taxpayer to whom such election also applies to the extent such underpayment results from the making of the election.
- i) Effective January 1, 2000, Public Act 91-535 amended the definition of the term "sales finance company" in IITA Section 1501(a)(8)(C). The General Assembly declared the definition of the term "sales finance company" in Public Act 91-535 to be declaratory of existing law. Accordingly, except as provided in this subsection (i), the

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- 1) Heading of the Part: Retailers' Occupation Tax
- 2) Code Citation: 86 Ill. Adm. Code 130
- 3) Section Numbers: Proposed Action:  
130.101 Amendment  
130.540 Amendment
- 4) Statutory Authority: 35 ILCS 120
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking amends Section 130.101 by implementing Public Act 91-870, which provides that "prepaid telephone calling arrangements" shall be considered tangible personal property subject to Retailers' Occupation Tax regardless of the form in which those arrangements may be embodied, transmitted, or fixed by any method now known or hereafter developed. Provides the definition of "prepaid telephone calling arrangements" and what is excluded from the definition. Also amends Section 130.540 by implementing Public Act 91-901, which provides that, with respect to motor vehicles, watercraft, trailers, and aircraft, every retailer shall file a separate return for each such item the retailer sells, except that if, in the same transaction, beginning January 1, 2000, a retailer of aircraft, watercraft, motor vehicles, or trailers transfers more than one aircraft, watercraft, motor vehicle, or trailer to a purchaser for use as qualifying rolling stock as provided in Section 2-5 of the Retailers' Occupation Tax Act, then that seller may report the transfer of all aircraft, watercraft, motor vehicles or trailers involved in that transaction to the Department on the same uniform invoice-transaction reporting return form.

- 6) Will this proposed amendment replace an emergency rulemaking currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this proposed amendment contain incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part? Yes

Section Numbers	Proposed Action	IL Register Citation
130.330	Amendment	05/26/00, 24 Ill. Reg. 7617
130.101	Amendment	07/28/00, 24 Ill. Reg. 11245
130.551	Amendment	07/28/00, 24 Ill. Reg. 11245
130.120	Amendment	08/04/00, 24 Ill. Reg. 11599
130.332	New Section	08/04/00, 24 Ill. Reg. 11599
130.1960	Amendment	08/04/00, 24 Ill. Reg. 11599
130.605	Amendment	09/08/00, 24 Ill. Reg. 13617
130.325	Amendment	09/29/00, 24 Ill. Reg. 14393

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- interpretation of the term "sales finance company" shall apply retroactively and for all purposes to all taxable years.
- 1) The definition of "sales finance company" provided by Public Act 91-535 shall apply to all original returns; to all amended returns; to all math error notices issued by the Department under IITA Section 904(a); to all Notices of Denial of refund claims issued under IITA Section 909(e); and to all notices of erroneous refunds made under IITA Section 912.
- A) Public act 91-535 imposes no time limit for the filing of an original or amended return applying its provisions to a particular taxable year. Accordingly, taxpayers may file original or amended returns claiming financial organization status under the amended definition of "sales finance company" at any time, provided that such returns are filed within the applicable statute of limitations period and meet all other relevant requirements of the IITA.
- B) In the case of a taxpayer that had claimed financial organization status on an original or amended return and whose status as a financial organization was denied by the Department:
- i) If the Notice of Deficiency or Notice of Denial has not become final, a taxpayer with a matter pending before the Office of Administrative Hearings of the Illinois Department of Revenue for a particular taxable year may raise as an issue the taxpayer's status as a "sales finance company" by making of a motion in conformance with the rules on motion practice as set forth in Section 100.185 of this Part.
- ii) If the Notice of Deficiency or Notice of Denial has become final, and the taxpayer is not contesting the Department's action in the courts under the Administrative Review Law [735 ILCS 5/Art. III] or the State Officers and Employees Money Disposition Act [30 ILCS 230], the taxpayer must have filed a timely amended return as set forth in subsection (h)(2)(B) of this Section in order to assert a claim that it qualifies as a "sales finance company" under the amended definition.
- iii) A taxpayer with a matter pending before the courts of this State for a particular taxable year must request treatment as a "sales finance company" by the making of a motion in conformance with the rules of the court.

(Source: Added at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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10) Statement of Statewide Policy Objectives: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.

11) Time, place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this notice to:

Gina Roccaforte  
Illinois Department of Revenue  
Legal Services Office  
101 West Jefferson  
Springfield, Illinois 62794  
Phone: (217) 782-6996

12) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Retailers of prepaid telephone calling arrangements and retailers of motor vehicles, watercraft, trailers, and aircraft
- B) Reporting, bookkeeping or other procedures required for compliance: Minimal
- C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: July 2000

The full text of the Proposed Amendments begins on the next page:

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TITLE 96: REVENUE  
CHAPTER I: DEPARTMENT OF REVENUE

PART 130  
RETAILERS' OCCUPATION TAX  
SUBPART A: NATURE OF TAX

Section  
130.101  
130.105  
130.110  
130.111  
130.115  
130.120

Character and Rate of Tax  
Responsibility of Trustees, Receivers, Executors or Administrators  
Occasional Sales  
Sale of Used Motor Vehicles by Leasing or Rental Business  
Habitual Sales  
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SUBPART B: SALE AT RETAIL

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The Test of a Sale at Retail  
Sales for Transfer Incident to Service  
Sales of Tangible Personal Property to Purchasers for Resale  
Further Illustrations of Sales for Use or Consumption Versus Sales for Resale  
Sales to Lessors of Tangible Personal Property  
Drop Shipments

SUBPART C: CERTAIN STATUTORY EXEMPTIONS

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Food, Drugs, Medicines and Medical Appliances  
Fuel Sold for Use in Vessels on Rivers Bordering Illinois  
Gasohol  
Fuel Used by Air Common Carriers in International Flights  
Graphic Arts Machinery and Equipment Exemption  
Manufacturing Machinery and Equipment  
Manufacturer's Purchase Credit  
Pollution Control Facilities  
Rolling Stock  
Oil Field Exploration, Drilling and Production Equipment  
Coal Exploration, Mining, Off Highway Hauling, Processing, Maintenance and Reclamation Equipment  
Aggregate Manufacturing

SUBPART D: GROSS RECEIPTS

Section



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130.164 Meaning of Gross Receipts  
 130.460 How to Avoid Paying Tax on State or Local Tax Passed on to the Purchaser  
 130.461 Cost of Doing Business Not Deductible  
 130.462 Transportation and Delivery Charges  
 130.463 Finance or Interest Charges--Penalties--Discounts  
 130.464 Traded-In Property  
 130.465 Deposit or Prepayment on Purchase Price  
 130.466 State and Local Taxes Other Than Retailers' Occupation Tax  
 130.467 Penalties  
 130.468 Federal Taxes  
 130.469 Installation, Alteration and Special Service Charges  
 130.470 Motor Vehicle Leasing and Trade-In Allowances

## SUBPART E: RETURNS

## SUBPART H: BOOKS AND RECORDS

130.500 Monthly Tax Returns--When Due--Contents  
 130.501 Quarterly Tax Returns  
 130.502 Returns and How to Prepare  
 130.503 Annual Tax Returns  
 130.510 First Return  
 130.515 Final Returns When Business is Discontinued  
 130.520 Who May Sign Returns  
 130.525 Returns Covering More Than One Location Under Same Registration--Separate Returns for Separately Registered Locations  
 130.530 Payment of the Tax, Including Quarter Monthly Payments in Certain Instances  
 130.535 Returns on a Transaction by Transaction Basis  
 130.540 Registrants Must File a Return for Every Return Period  
 130.545 Filing of Returns for Retailers by Suppliers Under Certain Circumstances  
 130.550 Prepayment of Retailers' Occupation Tax on Motor Fuel  
 130.551 Vending Machine Information Returns  
 130.555 Verification of Returns

## SUBPART F: INTERSTATE COMMERCE

## SUBPART J: BINDING OPINIONS

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 130.601 Preliminary Comments  
 130.605 Sales of Property Originating in Illinois  
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## SUBPART G: CERTIFICATE OF REGISTRATION

## SUBPART L: TIMELY MAILING TREATED AS TIMELY FILING AND PAYING

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 130.701 General Information on Obtaining a Certificate of Registration  
 130.705 Procedure in Disputed Cases Involving Financial Responsibility

## Requirements

130.710 Procedure When Security Must be Forfeited  
 130.715 Sub-Certificates of Registration  
 130.720 Separate Registrations for Different Places of Business of Same Taxpayer Under Some Circumstances  
 130.725 Display  
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 130.801 General Requirements  
 130.805 What Records Constitute Minimum Requirement  
 130.810 Records Required to Support Deductions  
 130.815 Preservation and Retention of Records  
 130.820 Preservation of Books During Pendency of Assessment Proceedings  
 130.825 Department Authorization to Destroy Records Sooner Than Would Otherwise be Permissible

## SUBPART I: PENALTIES AND INTEREST

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 130.901 Civil Penalties  
 130.905 Interest  
 130.910 Criminal Penalties

Section  
 130.1001 When Opinions from the Department are Binding

## SUBPART K: SELLERS LOCATED ON, OR SHIPPING TO, FEDERAL AREAS

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 130.1101 Definition of Federal Area  
 130.1105 When Deliveries on Federal Areas Are Taxable  
 130.1110 No Distinction Between Deliveries on Federal Areas and Illinois Deliveries Outside Federal Areas

Section  
 130.1201 General Information  
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## SUBPART M: LEASED PORTIONS OF LESSOR'S BUSINESS SPACE

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## SUBPART N: SALES FOR RESALE

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130.1405 Seller's Responsibility to Obtain Certificates of Resale and Requirements for Certificates of Resale  
130.1410 Requirements for Certificates of Resale (Repealed)  
130.1415 Resale Number---When Required and How Obtained  
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## SUBPART O: CLAIMS TO RECOVER ERRONEOUSLY PAID TAX

Section  
130.1501 Claims for Credit---Limitations---Procedure  
130.1505 Disposition of Credit Memoranda by Holders Thereof  
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## SUBPART P: PROCEDURE TO BE FOLLOWED UPON SELLING OUT OR DISCONTINUING BUSINESS

Section  
130.1601 When Returns are Required After a Business is Discontinued  
130.1605 When Returns Are Not Required After Discontinuation of a Business  
130.1610 Cross Reference to Bulk Sales Regulation

## SUBPART Q: NOTICE OF SALES OF GOODS IN BULK

Section  
130.1701 Bulk Sales: Notices of Sales of Business Assets

## SUBPART R: POWER OF ATTORNEY

Section  
130.1801 When Powers of Attorney May be Given  
130.1805 Filing of Power of Attorney With Department  
130.1810 Filing of Papers by Agent Under Power of Attorney

## SUBPART S: SPECIFIC APPLICATIONS

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Section  
130.1901 Addition Agents to Plating Baths  
130.1905 Agricultural Producers  
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130.1951 Enterprise Zones  
130.1952 Sales of Building Materials to a High Impact Business  
130.1955 Farm Chemicals  
130.1960 Finance Companies and Other Lending Agencies -- Installment Contracts -- Bad Debts  
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 Sales To Construction Contractors, Real Estate Developers and Speculative Builders  
 Sales to Governmental Bodies, Foreign Diplomats and Consular Personnel  
 Sales to or by Banks, Savings and Loan Associations and Credit Unions  
 Sales to Railroad Companies  
 Sellers of Gasohol, Coal, Coke, Fuel Oil and Other Combustibles  
 Sellers of Feeds and Breeding Livestock  
 Sellers of Newspapers, Magazines, Books, Sheet Music and Phonograph Records and Their Suppliers  
 Sellers of Seeds and Fertilizer  
 Sellers of Machinery, Tools and Special Order Items  
 Suppliers of Persons Engaged in Service Occupations and Professions  
 Trading Stamps and Discount Coupons  
 Undertakers and Funeral Directors  
 Vending Machines  
 Vendors of Curtains, Slip Covers, Floor Covering and Other Similar Items Made to Order  
 Vendors of Meals  
 Vendors of Memorial Stones and Monuments  
 Vendors of Signs  
 Vendors of Steam  
 Vendors of Tangible Personal Property Employed for Premiums, Advertising, Prizes, Etc.  
 Veterinarians  
 Warehousemen

## ILLUSTRATION A Examples of Tax Exemption Cards

AUTHORITY: Implementing the Illinois Retailers' Occupation Tax Act [35 ILCS 120] and authorized by Section 2505-25 of the Civil Administrative Code of Illinois [20 ILCS 2505/2505-25].

SOURCE: Adopted July 1, 1933; amended at 2 Ill. Reg. 50, p. 71, effective December 10, 1978; amended at 3 Ill. Reg. 12, p. 4, effective March 19, 1979; amended at 3 Ill. Reg. 13, pp. 93 and 95, effective March 25, 1979; amended at 3 Ill. Reg. 23, p. 164, effective June 3, 1979; amended at 3 Ill. Reg. 25, p. 229, effective June 17, 1979; amended at 3 Ill. Reg. 44, p. 193, effective October 19, 1979; amended at 3 Ill. Reg. 46, p. 52, effective November 2, 1979; amended at 4 Ill. Reg. 24, pp. 520, 539, 564 and 571, effective June 1, 1980;

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amended at 5 Ill. Reg. 818, effective January 2, 1981; amended at 5 Ill. Reg. 3014, effective March 11, 1981; amended at 5 Ill. Reg. 12782, effective November 2, 1981; amended at 6 Ill. Reg. 2860, effective March 3, 1982; amended at 6 Ill. Reg. 6780, effective May 24, 1982; codified at 6 Ill. Reg. 8229; recodified at 6 Ill. Reg. 8999; amended at 6 Ill. Reg. 15225, effective December 3, 1982; amended at 7 Ill. Reg. 7990, effective June 15, 1983; amended at 8 Ill. Reg. 5319, effective April 11, 1984; amended at 8 Ill. Reg. 19062, effective September 26, 1984; amended at 10 Ill. Reg. 1937, effective January 10, 1986; amended at 10 Ill. Reg. 12067, effective July 1, 1986; amended at 10 Ill. Reg. 19538, effective November 5, 1986; amended at 10 Ill. Reg. 19772, effective November 5, 1986; amended at 11 Ill. Reg. 4325, effective March 2, 1987; amended at 11 Ill. Reg. 6252, effective March 20, 1987; amended at 11 Ill. Reg. 18284, effective October 27, 1987; amended at 11 Ill. Reg. 18767, effective October 28, 1987; amended at 11 Ill. Reg. 19138, effective October 29, 1987; amended at 11 Ill. Reg. 19696, effective November 23, 1987; amended at 12 Ill. Reg. 5652, effective March 15, 1988; emergency amendment at 12 Ill. Reg. 14403, effective September 1, 1988, for a maximum of 150 days, modified in response to an objection of the Joint Committee on Administrative Rules at 12 Ill. Reg. 19531, effective November 4, 1988, not to exceed the 150 day time limit of the original rulemaking; emergency expired January 29, 1989; amended at 13 Ill. Reg. 11824, effective June 29, 1989; amended at 14 Ill. Reg. 241, effective December 21, 1989; amended at 14 Ill. Reg. 872, effective January 1, 1990; amended at 14 Ill. Reg. 15463, effective September 10, 1990; amended at 14 Ill. Reg. 16028, effective September 18, 1990; amended at 15 Ill. Reg. 6621, effective April 17, 1991; amended at 15 Ill. Reg. 13542, effective August 30, 1991; amended at 15 Ill. Reg. 15757, effective October 15, 1991; amended at 16 Ill. Reg. 1642, effective January 13, 1992; amended at 17 Ill. Reg. 860, effective January 11, 1993; amended at 17 Ill. Reg. 18142, effective October 4, 1993; amended at 17 Ill. Reg. 19651, effective November 2, 1993; amended at 18 Ill. Reg. 1537, effective January 13, 1994; amended at 18 Ill. Reg. 16866, effective November 7, 1994; amended at 19 Ill. Reg. 13446, effective September 12, 1995; amended at 19 Ill. Reg. 13568, effective September 11, 1995; amended at 19 Ill. Reg. 13968, effective September 18, 1995; amended at 20 Ill. Reg. 4428, effective March 4, 1996; amended at 20 Ill. Reg. 5366, effective March 26, 1996; amended at 20 Ill. Reg. 6991, effective May 7, 1996; amended at 20 Ill. Reg. 9116, effective July 2, 1996; amended at 20 Ill. Reg. 15753, effective December 2, 1996; expedited correction at 21 Ill. Reg. 4052, effective December 2, 1996; amended at 20 Ill. Reg. 16200, effective December 16, 1996; amended at 21 Ill. Reg. 12211, effective August 26, 1997; amended at 22 Ill. Reg. 3097, effective January 27, 1998; amended at 22 Ill. Reg. 11874, effective June 29, 1998; amended at 22 Ill. Reg. 19919, effective October 28, 1998; amended at 22 Ill. Reg. 21642, effective November 25, 1998; amended at 23 Ill. Reg. 9526, effective July 29, 1999; amended at 23 Ill. Reg. 9898, effective August 9, 1999; amended at 24 Ill. Reg. 10713, effective July 7, 2000; emergency amendment at 24 Ill. Reg. 11313, effective July 12, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 15104, effective October 2, 2000; amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.



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## SUBPART A: NATURE OF TAX

## Section 130.101 Character and Rate of Tax

The Retailers' Occupation Tax Act (the Act) [35 ILCS 120] imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. *On and after January 1, 2001, prepaid telephone calling arrangements shall be considered tangible personal property subject to the tax imposed under the Act regardless of the form in which those arrangements may be embodied, transmitted, or fixed by any method now known or hereafter developed (Section 2 of the Act). "Prepaid telephone calling arrangements" means the right to exclusively purchase telephone or telecommunications services that must be paid for in advance and enable the origination of one or more intrastate, interstate, or international telephone calls or other telecommunications using an access number, an authorization code, or both, whether manually or electronically dialed, for which payment to a retailer must be made in advance, provided that, unless recharged, no further service is provided once that prepaid amount of service has been consumed. Prepaid telephone calling arrangements include the recharge of a prepaid calling arrangement. For purposes of this Section, "recharge" means the purchase of additional prepaid telephone or telecommunications services whether or not the purchaser acquires a different access number or authorization code. For purposes of this Section, "telecommunications" means that term as defined in Section 2 of the Telecommunications Excise Tax Act [35 ILCS 630]. "Prepaid telephone calling arrangement" does not include an arrangement whereby the service provider reflects the amount of the purchase as a credit on an account for a customer under an existing subscription plan. (Section 2-27 of the Act)*

The tax is measured by the seller's gross receipts from such sales made in the course of such business. (For further information concerning "Gross Receipts", see Subpart D of this Part.)

## a) How to Determine Effective Rate

- 1) For the purposes of the Retailers' Occupation Tax Act, any tax liability incurred in respect to a sale of tangible personal property made in the regular course of business shall be computed by applying, to the gross receipts from such sale, the tax rate in effect as of the date of delivery of such property, provided that if delivery occurs after the tax rate changes, in a transaction in which receipts were received before the date of the rate change and tax was paid on such receipts when received by the seller in accordance with Section 130.430 of this Part at the rate which was in effect when the seller received such receipts, no additional tax will be due or credit allowed because of the delivery of the property occurring after the rate changes.
- 2) Furthermore, in the case of sales of building materials to real estate improvement construction contractors for use in performing construction contracts for third persons, if such property is delivered to the contractor after the effective date of a rate increase but will be used in performing a binding construction

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contract which was entered into before the effective date of the increase and under which the contractor is legally unable to shift the burden of the tax rate increase to his customer, the applicable tax rate will be the rate which was in effect before the effective date of the rate increase. Before a supplier may deliver materials to a construction contractor after the effective date of a tax rate increase at the rate which was in effect prior thereto, the purchasing contractor must give such supplier a written, signed certification stating that specifically described materials are being purchased for use in performing a binding contract which was entered into before the effective date of the rate increase (specifying such date) and under which the contractor is legally unable to shift the burden of the tax rate increase to his customer, identifying the construction contract in question by its date and by naming the contractor's construction work involved, and by giving the location on the job site where the construction contract is being performed or is to be performed.

## b) Tax Rate in Effect

The effective rate from January 1, 1985, through December 31, 1989, is 5%. On and after January 1, 1990, the effective rate is 6.25%.

## c) Effective Date of New Taxes

When something that has been exempted becomes taxable as to sales that are made on and after some particular date, the date of sale for this purpose shall be deemed to be the date of the delivery of the property. This is true even if such delivery is made under a contract that was entered into before the effective date of the new tax.

## d) Relation of Retailers' Occupation Tax to Use Tax

The Retailers' Occupation Tax is an occupation tax whose legal incidence is on the seller, rather than on the purchaser. However, with the enactment of the Use Tax Act in 1955 [35 ILCS 105], the retailer became a tax collector under that Act and is required to comply with the bracket systems or tax collection schedules prescribed in the Department's Use Tax Regulations for the collection of the Use Tax by retailers from users.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART E: RETURNS

## Section 130.540 Returns on a Transaction by Transaction Basis

## a) Who Must File Transaction Reporting Returns

*In addition, with respect to motor vehicles, watercraft, trailers, and aircraft (and implements of husbandry or special mobile equipment for which the purchaser intends to apply for an optional title), every*

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retailer selling this kind of tangible personal property in Illinois shall file, with the Department, upon a form prescribed and supplied by the Department, a separate return for each such item of tangible personal property that the retailer sells, except that if, in the same transaction:

- 1) a retailer of aircraft, watercraft, motor vehicles or trailers transfers more than one aircraft, watercraft, motor vehicle or trailer to another aircraft, watercraft, motor vehicle or trailer for the purpose of resale; or
- 2) beginning January 1, 2001, a retailer of aircraft, watercraft, motor vehicles, or trailers transfers more than one aircraft, watercraft, motor vehicle, or trailer to a purchaser for use as qualifying rolling stock (see Section 130.340) as provided in Section 2-5 of the Act;

then that seller may report the transfer of all aircraft, watercraft, motor vehicles or trailers involved in that transaction to the Department on the same uniform invoice-transaction reporting return form. (Section 3 of the Act) For purposes of the exception in subsection (a)(2) above, retailers may only report multiple sales of items of like kind and character on a single uniform invoice-transaction reporting return form. For example, retailers may report the sale of 15 motor vehicles to a single purchaser on a single uniform invoice-transaction reporting return form. However, retailers may not report the sale of 10 trailers and 5 motor vehicles to a single purchaser on a single uniform invoice-transaction reporting return form. Such a sale requires one uniform invoice-transaction reporting return form for the trailers and a second uniform invoice-transaction reporting return form for the motor vehicles.

In addition, with respect to motor vehicles and aircraft watercraft, and trailers that are required to be registered with an agency of this State (and implements of husbandry or special mobile equipment for which the purchaser intends to apply for an optional title), every retailer selling this kind of tangible personal property in Illinois shall file, with the Department, upon a form prescribed and supplied by the Department, a separate return for each such item of tangible personal property which the retailer sells.

- b) Function and Contents of Transaction Reporting Returns
  - 1) The transaction reporting return prescribed and supplied to retailers by the Department not only shall serve as such return (for both the buyer and the seller), but also may serve as the dealer's invoice to the purchaser. Such forms will be numbered. The Department will keep a record of all of these forms which it supplies to a given retailer, and he is responsible for accounting to the Department for all such forms. If a transaction reporting return form should be spoiled, the retailer should mark it "voided" and retain it in his books and records for 42 months. Transaction reporting returns are not

transferable by one retailer to another, but must be filed with or otherwise accounted for to the Department by the retailer to whom the particular forms are issued by the Department.

- 2) Such transaction reporting return must show the name and address of the seller; the name and address of the purchaser; the amount of the selling price including the amount allowed by the retailer for traded-in property, if any; the amount allowed by the retailer for the traded-in tangible personal property, if any; the balance payable after deducting such trade-in allowance from the total selling price; the amount of tax due from the retailer with respect to such transaction; the amount of Use Tax collected from the purchaser by the retailer on such transaction (or satisfactory evidence that such tax is not due in that particular instance, if that is claimed to be the fact); the place and date of the sale; a sufficient identification of the property sold, and such other information as the Department may reasonably require.

- c) Transaction Reporting Returns, When Due, Transaction Reporting Returns in Lieu of Monthly Returns

- 1) Such transaction reporting return shall be filed not later than 20 days after the date of delivery of the item that is being sold, but may be filed by the retailer at any time sooner than that if he chooses to do so.

- 2) If a retailer's sales of tangible personal property are limited to sales of motor vehicles, aircraft, watercraft, or trailers that are required to be registered with an agency of this State, or a combination of these items, so that all of his Retailers' Occupation Tax liability is required to be reported, and is reported, on such transaction reporting returns, and such retailer is not otherwise required to file monthly returns, such retailer need not file monthly returns.

- 3) If a retailer of motor vehicles, aircraft, watercraft, or trailers that are required to be registered with an agency of this State, or a combination of these items, need not file a monthly return, such retailer shall be required to file returns on an annual basis.

- d) Transmittal of Transaction Reporting Return by Way of Titling or Registering Agency

The transaction reporting return and tax remittance or proof of exemption may be transmitted to the Department by way of the State agency with which, or State officer with whom, the tangible personal property must be titled or registered if the Department and such agency or State officer determine that this procedure will expedite the processing of applications for title or registration.

- e) Submission of Tax or Proof of Exemption with Transaction Reporting Returns -- Issuance of Use Tax Receipt or Exemption Determination by Department of Revenue

With each such transaction reporting return, the retailer shall remit

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the proper amount of tax due (or shall submit satisfactory evidence that the sale is not taxable if that is the case), to the Department or its agents, whereupon the Department shall issue, in the purchaser's name, a Use Tax receipt (or a certificate of exemption if the Department is satisfied that the particular sale is tax exempt) which such purchaser may submit to the agency with which, or State officer with whom, he must title or register the tangible personal property that is involved in support of such purchaser's application for an Illinois certificate or other evidence of title or registration to such tangible personal property.

- f) Issuance of Title or Registration Where Retailer Fails or Refuses to Remit Tax Collected by Retailer from User  
No retailer's failure or refusal to remit tax hereunder shall preclude a user, who has paid the proper tax to the retailer, from obtaining his certificate of title or other evidence of title or registration upon satisfying the Department that such user has paid the proper tax (if tax is due) to the retailer.

- g) Direct Payment of Tax by User to Department on Intrastate Purchase under Certain Circumstances

If the user who would otherwise pay tax to the retailer wants the transaction reporting return filed and the payment of tax or proof of exemption made to the Department before the retailer is willing to take these actions and such user has not paid the tax to the retailer, such user may certify to the fact of such delay by the retailer and may (upon the Department being satisfied of the truth of such certification) transmit the information required by the transaction reporting return and the remittance for tax or proof of exemption directly to the Department and obtain his tax receipt or exemption determination, in which event the transaction reporting return and tax remittance (if a tax payment was required) shall be credited by the Department to the proper retailer's account with the Department, but without the 1.75% discount being allowed. When the user pays the tax directly to the Department as aforesaid, he shall pay the tax in the same amount and in the same form in which it would be remitted if the tax had been remitted to the Department by the retailer.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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- 1) Heading of the Part: Service Occupation Tax  
2) Code Citation: 86 Ill. Adm. Code 140  
3) Section Numbers: Proposed Action:  
140.101 Amendment  
4) Statutory Authority: 35 ILCS 115  
5) A Complete Description of the Subjects and Issues Involved: This rulemaking amends Section 140.101 by implementing Public Act 91-870, which provides that "prepaid telephone calling arrangements" shall be considered tangible personal property subject to Service Occupation Tax regardless of the form in which those arrangements may be embodied, transmitted, or fixed by any method now known or hereafter developed. Provides the definition of "prepaid telephone calling arrangements" and what is excluded from the definition.

- 6) Will this proposed amendment replace an emergency amendment currently in effect? No

- 7) Does this rulemaking contain an automatic repeal date? No

- 8) Does this proposed amendment contain incorporations by reference? No

- 9) Are there any other proposed amendments pending on this Part? Yes

Section Numbers	Proposed Action	IL Register Citation
140.101	Amendment	10/27/00, 24 Ill. Reg. 15852
140.105	Amendment	10/27/00, 24 Ill. Reg. 15852
140.106	New Section	10/27/00, 24 Ill. Reg. 15852
140.108	New Section	10/27/00, 24 Ill. Reg. 15852
140.109	New Section	10/27/00, 24 Ill. Reg. 15852
140.110	New Section	10/27/00, 24 Ill. Reg. 15852
140.125	Amendment	10/27/00, 24 Ill. Reg. 15852
140.126	Amendment	10/27/00, 24 Ill. Reg. 15852
140.135	Repeal	10/27/00, 24 Ill. Reg. 15852
140.145	Amendment	10/27/00, 24 Ill. Reg. 15852
140.201	Amendment	10/27/00, 24 Ill. Reg. 15852
140.301	Amendment	10/27/00, 24 Ill. Reg. 15852
140.901	Amendment	10/27/00, 24 Ill. Reg. 15852
140.1001	Amendment	10/27/00, 24 Ill. Reg. 15852
140.1005	Amendment	10/27/00, 24 Ill. Reg. 15852
140.1010	Repeal	10/27/00, 24 Ill. Reg. 15852
140.1015	Repeal	10/27/00, 24 Ill. Reg. 15852
140.1025	Amendment	10/27/00, 24 Ill. Reg. 15852
140.1305	Amendment	10/27/00, 24 Ill. Reg. 15852
140.1401	Amendment	10/27/00, 24 Ill. Reg. 15852



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10) Statement of Statewide Policy Objectives: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this notice to:

Gina Roccaforte  
Illinois Department of Revenue  
Legal Services Office  
101 West Jefferson  
Springfield, Illinois 62794  
(217) 782-6996

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: Purchasers of prepaid telephone calling arrangements

B) Reporting, bookkeeping or other procedures required for compliance: Minimal

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: July 2000

The full text of the Proposed Amendments begins on the next page:

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TITLE 86: REVENUE

CHAPTER I: DEPARTMENT OF REVENUE

PART 140

SERVICE OCCUPATION TAX

SUBPART A: NATURE OF TAX

Section	Basis and Rate of the Service Occupation Tax
140.101	Registration of Servicemen
140.105	Presumption that Tax Applies (Repealed)
140.110	Occasional Sales to Servicemen by Suppliers (Repealed)
140.115	Meaning of Serviceman
140.120	Examples of Nontaxability
140.125	Exemption of Food, Drugs and Medical Appliances
140.126	Service Provided to Persons Who Lease Tangible Personal Property to Exempt Hospitals
140.127	Persons Who Lease Tangible Personal Property to Governmental Bodies
140.128	Suppliers of Printers (Repealed)
140.130	Sales of Drugs and Related Items, to or by Pharmacists
140.135	Other Examples of Taxable Transactions
140.140	Multi-Service Situations
140.145	

SUBPART B: DEFINITIONS

Section	General Definitions
140.201	

SUBPART C: BASE OF THE TAX

Section	Cost Price
140.301	Refunds by Supplier or Serviceman
140.305	

SUBPART D: TAX RETURNS

Section	Monthly Returns When Due -- Contents of Returns
140.401	Annual Tax Returns
140.405	Final Return
140.410	Taxpayer's Duty to Obtain Form
140.415	Annual Information Returns by Servicemen
140.420	Filing of Returns for Serviceman "Suppliers" by their Suppliers
140.425	Under Certain Circumstances
140.430	Incorporation by Reference

SUBPART E: INTERSTATE COMMERCE

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Section  
140.501 Sales of Service Involving Property Originating in Illinois  
140.505 Sales of Service Involving Property Originating Outside of Illinois  
(Repealed)

SUBPART F: REGISTRATION UNDER THE SERVICE OCCUPATION TAX ACT

Section  
140.601 General Information

SUBPART G: BOOKS AND RECORDS

Section  
140.701 Requirements

SUBPART H: PENALTIES, INTEREST AND PROCEDURES

Section  
140.801 General Information

SUBPART I: WHEN OPINIONS FROM THE DEPARTMENT ARE BINDING

Written Opinions

SUBPART J: COLLECTION OF THE TAX

Section  
140.1001 Payment of Tax to the Supplier  
140.1005 Receipt to be Obtained for Tax Payments  
140.1010 Payment of Tax Directly to the Department  
140.1015 Itemization of the Tax by Suppliers  
140.1020 Use of Bracket Chart  
140.1025 Advertising in Regard to the Tax

SUBPART K: TIMELY MAILING TREATED AS TIMELY FILING AND PAYING -- MEANING OF DUE DATE WHICH FALLS ON SATURDAY, SUNDAY OR A HOLIDAY

Section  
140.1101 Filing of Documents with the Department

SUBPART L: LEASED PORTIONS OF LESSOR'S BUSINESS SPACE

Section  
140.1201 When Lessee of Premises May File Return for Leased Department  
140.1205 When Lessor of Premises Should File Return for Leased Department  
140.1210 Meaning of "Lessor" and "Lessee" in this Regulation

SUBPART M: USE OF EXEMPTION CERTIFICATES

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Section  
140.1301 When Purpose of Serviceman's Purchase is Known (Repealed)  
140.1305 When Purpose of Serviceman's Purchase is Unknown  
140.1310 Blanket Percentage Exemption Certificates (Repealed)

SUBPART N: CLAIMS TO RECOVER ERRONEOUSLY PAID TAX

Section  
140.1401 Claims for Credit -- Limitations -- Procedure  
140.1405 Disposition of Credit Memoranda by Holders Thereof  
140.1410 Refunds  
140.1415 Interest

SUBPART O: DISCONTINUATION OF A BUSINESS

Section  
140.1501 Procedures

SUBPART P: NOTICE OF SALES OF GOODS IN BULK

Section  
140.1601 Requirements and Procedures

SUBPART Q: POWER OF ATTORNEY

Section  
140.1701 General Information

AUTHORITY: Implementing the Service Occupation Tax Act [35 ILCS 115] and authorized by Section 2505-100 of the Civil Administrative Code of Illinois [20 ILCS 2505/2505-100].

SOURCE: Adopted May 21, 1962; amended at 3 Ill. Reg. 23, p. 161, effective June 3, 1979; amended at 3 Ill. Reg. 44, p. 198, effective October 19, 1979; amended at 4 Ill. Reg. 24, pp. 526, 536 and 550, effective June 1, 1980; amended at 5 Ill. Reg. 822, effective January 2, 1981; amended at 6 Ill. Reg. 2879, 2883, 2886, 2892, 2895 and 2897, effective March 3, 1982; codified at 6 Ill. Reg. 9326; amended at 9 Ill. Reg. 7941, effective May 14, 1985; amended at 11 Ill. Reg. 14090, effective August 11, 1987; emergency amendment at 12 Ill. Reg. 14419, effective September 1, 1988, for a maximum of 150 days; emergency expired January 29, 1989; amended at 13 Ill. Reg. 9388, effective June 6, 1989; amended at 14 Ill. Reg. 262, effective January 1, 1990; amended at 14 Ill. Reg. 15480, effective September 10, 1990; amended at 15 Ill. Reg. 5834, effective April 5, 1991; amended at 18 Ill. Reg. 1550, effective January 13, 1994; amended at 20 Ill. Reg. 5379, effective March 26, 1996; amended at 20 Ill. Reg. 7008, effective May 7, 1996; amended at 20 Ill. Reg. 16211, effective December 16, 1996; amended at 24 Ill. Reg. 8125, effective May 26, 2000; amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.





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2. Fix Brakes:				
A. turn rotors,		40-00	40-00	
B. pads, master cylinder,				
fluid	150-00	250-00	80-00	330-00
3. Oil change,				
filter five				
quarts of	4-00	8-00	10-00	18-00
oil				
TOTAL	\$214-00	\$358-00	\$180-00	\$538-00

Therefore, \$214-00 cost of parts = 39% of the \$538-00 total transaction amount. Service Occupation Tax (SOT) is due on the \$358-00 selling price of the parts when that amount is separately stated on the bill apart from the \$180-00 charge for labor. If the selling price of the parts is not specifically stated (\$358-00) on the invoice, one-half of the total transaction amount (\$538-00 divided by 2 = \$269-00) is subject to SOT. (The cost price of the parts need not be stated on the customer's invoice, but is shown here for illustrative purposes only.) If the cost price of the parts was less than 35% of the total service charge, the serviceman would self-assess Use Tax on the purchase price (\$214-00) of the parts if tax was not previously paid to the supplier. If tax was paid to the supplier, the serviceman is not required to collect tax as a specific item on the invoice to the customer. Retail sales subject to Retailers' Occupation Tax, such as "over-the-counter" sales of parts, must be excluded when determining the 35% threshold.

2) Annual aggregate method. A serviceman may elect to determine if he is under the 35% cost of materials to total transaction selling price ratio by examining the total annual aggregate cost of parts transferred in the course of providing service and the total annual aggregate receipts from the sales of service, including sales of service in which no property is transferred. The cost of materials sold at retail or removed from inventory for use, or incorporated into repairs of real estate, must be excluded when determining the above percentage threshold. The annual aggregate method will be determined on the basis of the taxpayer's fiscal year. The taxpayer may elect to use either method to determine the cost of materials to total transaction selling price ratio.

g) When a serviceman contracts to design, develop and produce special order machinery or equipment, the tax imposed by this Act shall be based on the serviceman's cost price of the tangible personal property transferred incident to the completion of the contract. (Section 3 of the Act)-

h) Taxpayers who are registered may purchase all tangible personal

property for retransfer by providing their suppliers with valid resale certificates even if in some transactions the cost price of the tangible personal property will be less than 35% of the total gross receipts from the transaction. If the serviceman paid tax to his supplier in the expectation that the cost of parts would be less than 35% of the total transaction selling price, but the actual percentage was more than 35%, the serviceman would be able to take credit for the tax paid to the supplier but would be liable for tax on the selling price of the parts, if stated, or on 50% of the total transaction selling price. In the case of servicemen transferring prescription drugs or servicemen engaged in graphic arts production, replace the references to 35% in this subsection with .75%. The serviceman may also be liable for penalties due to a failure to file returns.

i) Examples:

	Cost	Selling Price	Gross Receipts	Tax Base
Not Separately Stated	\$50-00	-0-	\$62.50	\$50-00 (Base is never less than cost price.)
Separately Stated	\$12-00	\$15-00	\$25-00	\$15-00 (Selling price)
Not Separately Stated	\$12-00	-0-	\$30-00	\$15-00 (1/2 of gross receipts)
Separately Stated	\$12-00	\$10-00	\$26-00	\$12-00 (Cost/ selling price)
Not Separately Stated	\$2-00	\$5-00	\$10-00	Not subject to Service Occupation Tax. Subject to Retailers' Occupation or Use Tax--35% Rule \$2-00)

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Service Use Tax
- 2) Code Citation: 86 Ill. Adm. Code 160
- 3) Section Numbers: Proposed Action:  
160.101 Amendment
- 4) Statutory Authority: 35 ILCS 110

5) A Complete Description of the Subjects and Issues Involved: This rulemaking amends Section 160.101 by implementing Public Act 91-870, which provides that "prepaid telephone calling arrangements" shall be considered tangible personal property subject to Service Use Tax regardless of the form in which those arrangements may be embodied, transmitted, or fixed by any method now known or hereafter developed. Provides the definition of "prepaid telephone calling arrangements" and what is excluded from the definition.

6) Will this proposed amendment replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this proposed amendment contain incorporations by reference? No

9) Are there any other proposed amendments pending on this Part? Yes

Section Numbers	Proposed Action	IL Register Citation
160.101	Amendment	10/27/00, 24 Ill. Reg. 15895
160.105	Amendment	10/27/00, 24 Ill. Reg. 15895
160.110	Amendment	10/27/00, 24 Ill. Reg. 15895
160.115	Amendment	10/27/00, 24 Ill. Reg. 15895
160.120	Repeal	10/27/00, 24 Ill. Reg. 15895
160.125	Amendment	10/27/00, 24 Ill. Reg. 15895
160.130	Amendment	10/27/00, 24 Ill. Reg. 15895
160.135	Amendment	10/27/00, 24 Ill. Reg. 15895
160.150	Amendment	10/27/00, 24 Ill. Reg. 15895
160.155	Amendment	10/27/00, 24 Ill. Reg. 15895

10) Statement of Statewide Policy Objectives: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this notice to:

Gina Roccaforte

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Illinois Department of Revenue  
Legal Services Office  
101 West Jefferson  
Springfield, Illinois 62794  
217/782-6996

12) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not-for-profit corporations affected: Purchasers of prepaid telephone calling arrangements
- B) Reporting, bookkeeping or other procedures required for compliance: Minimal

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: July 2000

The full text of the Proposed Amendments begins on the next page:

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tax imposed by the Service Use Tax Act does not apply to the use of such property in this State.  
b) Any evidence that property was sold by any person for delivery to a person residing in or engaged in business in this State shall be prima facie evidence that such property was sold for use in this State.

c) Rate  
1) The rate of the Service Use Tax after December 31, 1989, is 6.25% of the serviceman's selling price of the tangible personal property transferred by the serviceman as an incident to a sale of service.

2) On and after January 1, 2001, prepaid telephone calling arrangements shall be considered tangible personal property subject to the tax imposed under the Act regardless of the form in which those arrangements may be embodied, transmitted, or fixed by any method now known or hereafter developed. (Section 3 of the Act) "Prepaid telephone calling arrangements" means the right to exclusively purchase telephone or telecommunications services that must be paid for in advance and enable the origination of one or more intrastate, interstate, or international telephone calls or other telecommunications using an access number, an authorization code, or both, whether manually or electronically dialed, for which payment to a retailer must be made in advance, provided that, unless recharged, no further service is provided once that prepaid amount of service has been consumed. Prepaid telephone calling arrangements include the recharge of a prepaid calling arrangement. For purposes of this Section, "recharge" means the purchase of additional prepaid telephone or telecommunications services whether or not the purchaser acquires a different access number or authorization code. For purposes of this Section, "telecommunications" means that term as defined in Section 2 of the Telecommunications Excise Tax Act [35 ILCS 630]. Prepaid telephone calling arrangement" does not include an arrangement whereby the service provider reflects the amount of the purchase as a credit on an account for a customer under an existing subscription plan. (Section 3-27 of the Act)

d) If the property that is purchased from a serviceman as an incident to a sale of service is acquired outside Illinois and used outside Illinois before being brought to Illinois for use here and is nevertheless taxable under the Service Use Tax Act, the cost price on which the tax is computed shall be reduced by an amount which represents a reasonable allowance for depreciation for the period of such prior out-of-State use. A "reasonable allowance for depreciation" is deemed by the Department to be the amount of depreciation determined by use of the straight line method of depreciation.

e) The date of the purchase of service is deemed to be the date of the

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TITLE 86: REVENUE  
CHAPTER I: DEPARTMENT OF REVENUE

PART 160  
SERVICE USE TAX

Section	Nature of the Tax
160.101	Definitions
160.105	Kinds of Uses And Users Not Taxed
160.110	Collection Of The Service Use Tax By Servicemen
160.115	Persons Who Lease Tangible Personal Property to Exempt Hospitals
160.116	Persons Who Lease Tangible Personal Property to Governmental Bodies
160.117	Receipt For The Tax
160.120	Special Information For Taxable Users
160.125	Registration Of Servicemen
160.130	Serviceman's Return
160.135	Penalties, Interest And Procedures
160.140	Incorporation Of Illinois Service Occupation Tax Regulations By Reference
160.145	Claims To Recover Erroneously Paid Tax--Limitations--Procedures
160.150	Disposition Of Credit Memoranda By Holders Thereof
160.160	Refunds
160.165	Interest

AUTHORITY: Implementing the Service Use Tax Act [35 ILCS 110] and authorized by Section 2505-100 of the Civil Administrative Code of Illinois [20 ILCS 2505/2505-100].

SOURCE: Adopted May 21, 1962; codified at 6 Ill. Reg. 9326; amended at 8 Ill. Reg. 8619, effective June 5, 1984; amended at 11 Ill. Reg. 5322, effective March 17, 1987; amended at 11 Ill. Reg. 9963, effective May 8, 1987; amended at 13 Ill. Reg. 9399, effective June 6, 1989; amended at 15 Ill. Reg. 5845, effective April 5, 1991; amended at 18 Ill. Reg. 1557, effective January 13, 1994; amended at 20 Ill. Reg. 7015, effective May 7, 1996; amended at 20 Ill. Reg. 16219, effective December 16, 1996; amended at 24 Ill. Reg. 8135, effective May 26, 2000; amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

Section 160.101 Nature of the Tax

a) The Service Use Tax is a privilege tax imposed on the privilege of using, in this State, tangible personal property that is received anywhere as an incident to a purchase of service from a serviceman, as "serviceman" is defined in the Act. However, if the serviceman would not be taxable under the Service Occupation Tax Act [35 ILCS 115] (~~115~~) (~~115~~), ~~Rev. Stat.~~ ~~1909~~, ~~ch. 120~~, ~~par. 439-101-et-seq.~~ despite all elements of the sale of service occurring in Illinois, then the



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delivery, to the user, of the tangible personal property which the serviceman transfers as an incident to a sale of service.

f) The Service Use Tax Act complements the Service Occupation Tax Act. That is why the Service Use Tax is restricted to cases in which the property is purchased from a serviceman as an incident to a sale of service.

g) If the serviceman is required or authorized to collect the Service Use Tax, the purchaser must pay the tax to the serviceman. The serviceman must then remit the Service Use Tax to the Department after reducing the amount of that tax by the amount of Service Occupation Tax which he is required to pay and does pay, with respect to that property, either to a supplier or to the Department. If the purchaser receives the property as an incident to a purchase of service from a serviceman but does not pay the Service Use Tax to such serviceman, the purchaser must pay the Service Use Tax directly to the Department.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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1) Heading of the Part: Telecommunications Excise Tax

2) Code Citation: 86 Ill. Adm. Code 495

3) Section Numbers: Proposed Action:  
495.140 Amendment

4) Statutory Authority: 35 ILCS 630

5) A Complete Description of the Subjects and Issues Involved: This rulemaking amends Section 495.140 by implementing Public Act 91-870, which provides that beginning January 1, 2001, "prepaid telephone calling arrangements" shall be not be considered telecommunications subject to Telecommunications Excise Tax. Provides the definition of "prepaid telephone calling arrangements" and what is excluded from the definition.

6) Will this proposed amendment replace an emergency amendment currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this proposed amendment contain incorporations by reference? No

9) Are there any other proposed amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this notice to:

Gina Roccaforte  
Illinois Department of Revenue  
Legal Services Office  
10. West Jefferson  
Springfield, Illinois 62794  
(217) 782-6996

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: Retailers of prepaid telephone calling arrangements.

B) Reporting, bookkeeping or other procedures required for compliance:  
Minimal

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C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: July 2000

The full text of the Proposed Amendments begins on the next page:

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENTS

TITLE 86: REVENUE  
CHAPTER 1: DEPARTMENT OF REVENUE

## PART 495

## TELECOMMUNICATIONS EXCISE TAX

## Section

495.100 Meaning of "Gross Charges"

495.105 Exemptions

495.110 Retailers

495.115 Interstate

495.120 Mobile Operations Reporting Option

495.125 Responsibility for Accounting and Payment of Tax

495.130 Credits

495.135 Tax Returns--When Due--Contents

495.140 Imposition of Telecommunications Excise Tax

**AUTHORITY:** Implementing the Telecommunications Excise Tax Act [35 ILCS 630] and authorized by Section 17 of the Telecommunications Excise Tax Act [35 ILCS 630/17].

**SOURCE:** Adopted at 14 Ill. Reg. 11321, effective July 1, 1990; amended at 21 Ill. Reg. 13658, effective September 29, 1997; amended at 22 Ill. Reg. 11886, effective June 29, 1998; amended at 24 Ill. Reg. 12082, effective July 28, 2000; amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## Section 495.140 Imposition of Telecommunications Excise Tax

- a) The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charge for such telecommunications purchased at retail from retailers. On and after January 1, 2001, prepaid telephone calling arrangements shall not be considered telecommunications subject to the Telecommunications Excise Tax. (Sections 3 and 4 of the Act) "Prepaid telephone calling arrangements" means the right to exclusively purchase telephone or telecommunications services that must be paid for in advance and enable the origination of one or more intrastate, interstate, or international telephone calls or other telecommunications using an access number, an authorization code, or both, whether manually or electronically dialed, for which payment to a retailer must be made in advance, provided that, unless recharged, no further service is provided once that prepaid amount of service has been consumed. Prepaid telephone calling arrangements include the recharge of a prepaid calling arrangement. For purposes of this Section, "recharge" means the purchase of additional prepaid telephone or telecommunications services whether or not the purchaser acquires a different access number or authorization code. For purposes of this

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Section, "telecommunications" means that term as defined in Section 2 of the Telecommunications Excise Tax Act [35 ILCS 630]. "Prepaid telephone calling arrangement" does not include an arrangement whereby a customer purchases a payment card and pursuant to which the service provider reflects the amount of the purchase as a credit on an account for a customer under an existing subscription plan. (Section 2 of the Act)

b) The Telecommunications Excise Tax must be collected from a taxpayer by a "retailer maintaining a place of business in this State".

1) "Retailer maintaining a place of business in this State" means and includes any retailer having or maintaining within this State, directly or by a subsidiary, an office, distribution facilities, transmission facilities, sales office, warehouse or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in this State. (Section 2(m) of the Act)

2) Retailers maintaining a place of business in this State shall collect the tax from the taxpayer by adding the tax to the gross charge for the act or privilege of originating or receiving telecommunications in this State, when sold for use. Whenever possible, the tax shall be stated as a distinct item separate and apart from the gross charge for telecommunications.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Use Tax
- 2) Code Citation: 86 Ill. Adm. Code 150
- 3) Section Numbers: Proposed Action:  
150.105 Amendment
- 4) Statutory Authority: 35 ILCS 105
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking amends Section 150.105 by implementing Public Act 91-870, which provides that "prepaid telephone calling arrangements" shall be considered tangible personal property subject to Use Tax regardless of the form in which those arrangements may be embodied, transmitted, or fixed by any method now known or hereafter developed. Provides the definition of "prepaid telephone calling arrangements" and what is excluded from the definition.
- 6) Will this proposed amendment replace an emergency rulemaking currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this proposed amendment contain incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part? Yes

Section Numbers      Proposed Action      IL Register Citation  
150.337      New Section      9/22/00, 24 Ill. Reg. 14197

10) Statement of Statewide Policy Objectives: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this notice to:

Gina Roccaforte  
Illinois Department of Revenue  
Legal Services Office  
101 West Jefferson  
Springfield, Illinois 62794  
(217) 782-6996

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit



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corporations affected: Purchasers of prepaid telephone calling

B) Reporting, bookkeeping or other procedures required for compliance:  
Minimal

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: July 2000

The full text of the Proposed Amendments begins on the next page:

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NOTICE OF PROPOSED AMENDMENTS

TITLE 86: REVENUE  
CHAPTER I: DEPARTMENT OF REVENUE

PART 150  
USE TAX

SUBPART A: NATURE OF THE TAX

Section	Description of the Tax
150.101	Rate and Base of Tax
150.105	How To Compute Depreciation
150.110	How to Determine Effective Date
150.115	Effective Date of New Taxes
150.120	Relation of Use Tax to Retailers' Occupation Tax
150.125	Accounting for the Tax
150.130	How to Avoid Paying Tax on Use Tax Collected From the Purchaser
150.135	

SUBPART B: DEFINITIONS

Section	General Definitions
150.201	

SUBPART C: KINDS OF USES AND USERS NOT TAXED

Section	Cross References
150.301	Effect of Limitation that Purchase Must be at Retail From a Retailer to be Taxable
150.305	Interim Use and Demonstration Exemptions
150.306	Exemptions to Avoid Multi-State Taxation
150.310	Non-resident Exemptions
150.315	Meaning of "Acquired Outside This State"
150.320	Charitable, Religious, Educational and Senior Citizens Recreational Organizations as Buyers
150.325	Governmental Bodies as Buyers
150.330	Persons Who Lease Tangible Personal Property to Exempt Hospitals
150.331	Persons Who Lease Tangible Personal Property to Governmental Bodies
150.332	Game or Game Birds Purchased at Game Breeding and Hunting Areas or Exotic Game Hunting Areas
150.335	Fuel Brought into Illinois in Locomotives
150.336	

SUBPART D: COLLECTION OF THE USE TAX FROM USERS BY RETAILERS

Section	Collection of the Tax by Retailers From Users
150.401	Tax Collection Brackets
150.405	Tax Collection Brackets for a 2-1/4% Rate of Tax (Repealed)
150.410	

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150.415 Tax Collection Brackets for a 2-1/2% Rate of Tax (Repealed)  
150.420 Tax Collection Brackets for a 2-3/4% Rate of Tax (Repealed)  
150.425 Tax Collection Brackets for a 3% Rate of Tax (Repealed)  
150.430 Tax Collection Brackets for a 3-1/8% Rate of Tax (Repealed)  
150.435 Tax Collection Brackets for a 3-1/4% Rate of Tax (Repealed)  
150.440 Tax Collection Brackets for a 3-1/2% Rate of Tax (Repealed)  
150.445 Tax Collection Brackets for a 3-3/4% Rate of Tax (Repealed)  
150.450 Tax Collection Brackets for a 4% Rate of Tax (Repealed)  
150.455 Tax Collection Brackets for a 4-1/8% Rate of Tax (Repealed)  
150.460 Tax Collection Brackets for a 4-1/4% Rate of Tax (Repealed)  
150.465 Tax Collection Brackets for a 4-1/2% Rate of Tax (Repealed)  
150.470 Tax Collection Brackets for a 4-3/4% Rate of Tax (Repealed)  
150.475 Tax Collection Brackets for a 5% Rate of Tax (Repealed)  
150.480 Tax Collection Brackets for a 5-1/8% Rate of Tax (Repealed)  
150.485 Tax Collection Brackets for a 5-1/4% Rate of Tax (Repealed)  
150.490 Tax Collection Brackets for a 5-1/2% Rate of Tax (Repealed)  
150.495 Tax Collection Brackets for a 5-3/4% Rate of Tax (Repealed)  
150.500 Tax Collection Brackets for a 6% Rate of Tax (Repealed)  
150.505 Optional 1% Schedule (Repealed)  
150.510 Exact Collection of Tax Required When Practicable  
150.515 Prohibition Against Retailer's Representing That He Will Absorb The Tax  
  
150.520 Display of Tax Collection Schedule (Repealed)  
150.525 Methods for Calculating Tax on Sales of Items Subject to Differing Tax Rates

## SUBPART E: RECEIPT FOR THE TAX

Section  
150.601 Requirements

## SUBPART F: SPECIAL INFORMATION FOR TAXABLE USERS

Section  
150.701 When and Where to File a Return  
150.705 Use Tax on Items that are Titled or Registered in Illinois  
150.710 Procedure in Claiming Exemption from Use Tax  
150.715 Receipt for Tax or Proof of Exemption Must Accompany Application for Title or Registration  
  
150.716 Display Certificates for House Trailers  
150.720 Issuance of Title or Registration Where Retailer Fails or Refuses to Remit Tax Collected by Retailer from User  
150.725 Direct Payment of Tax by User to Department on Intrastate Purchase Under Certain Circumstances  
150.730 Direct Reporting of Use Tax to Department by Registered Retailers

## SUBPART G: REGISTRATION OF OUT-OF-STATE RETAILERS

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Section  
150.801 When Out-of-State Retailers Must Register and Collect Use Tax  
150.805 Voluntary Registration by Certain Out-of-State Retailers  
150.810 Incorporation by Reference  
  
Section  
150.901 When and Where to File  
150.905 Deduction for Collecting Tax  
150.910 Incorporation by Reference  
150.915 Itemization of Receipts from Sales and the Tax Among the Different States from Which Sales are Made into Illinois

## SUBPART I: PENALTIES, INTEREST, STATUTE OF LIMITATIONS AND ADMINISTRATIVE PROCEDURES

Section  
150.1001 General Information

## SUBPART J: TRADED-IN PROPERTY

Section  
150.1101 General Information

## SUBPART K: INCORPORATION OF ILLINOIS RETAILERS' OCCUPATION TAX REGULATIONS BY REFERENCE

Section  
150.1201 General Information

## SUBPART L: BOOKS AND RECORDS

Section  
150.1301 Users' Records  
150.1305 Retailers' Records  
150.1310 Use of Signs to Prove Collection of Tax as a Separate Item  
150.1315 Consequence of Not Complying with Requirement of Collecting Use Tax Separately From the Selling Price  
150.1320 Incorporation by Reference

## SUBPART M: CLAIMS TO RECOVER ERRONEOUSLY PAID TAX

Section  
150.1401 Claims for Credit--Limitations--Procedure  
150.1405 Disposition of Credit Memoranda by Holders Thereof  
150.1410 Refunds  
150.1415 Interest

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TABLE A Tax Collection Brackets

AUTHORITY: Implementing the Use Tax Act [35 ILCS 105] and authorized by Section 2505-90 of the Civil Administrative Code of Illinois [20 ILCS 2505/2505-90].

SOURCE: Adopted August 1, 1955; amended at 4 Ill. Reg. 24, p. 553, effective June 1, 1980; amended at 5 Ill. Reg. 5351, effective April 30, 1981; amended at 5 Ill. Reg. 11072, effective October 6, 1981; codified at 6 Ill. Reg. 9326; amended at 8 Ill. Reg. 3704, effective March 12, 1984; amended at 8 Ill. Reg. 7278, effective May 11, 1984; amended at 8 Ill. Reg. 8623, effective June 5, 1984; amended at 11 Ill. Reg. 6275, effective March, 20, 1987; amended at 14 Ill. Reg. 6835, effective April 19, 1990; amended at 15 Ill. Reg. 5861, effective April 5, 1991; emergency amendment at 16 Ill. Reg. 14889, effective September 9, 1992, for a maximum of 150 days; amended at 17 Ill. Reg. 1947, effective February 2, 1993; amended at 18 Ill. Reg. 1584, effective January 13, 1994; amended at 20 Ill. Reg. 7019, effective May 7, 1996; amended at 20 Ill. Reg. 16224, effective December 16, 1996; amended at 22 Ill. Reg. 21670, effective November 25, 1998; amended at 24 Ill. Reg. 10728, effective July 7, 2000; amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART A: NATURE OF THE TAX

Section 150.105 Rate and Base of Tax

a) The rate of the Use Tax after December 31, 1989, is 6.25% of the selling price of the tangible personal property involved, provided that if the property that is purchased at retail from a retailer is acquired outside Illinois and used outside Illinois before being brought to Illinois for use here and is nevertheless taxable under the Use Tax Act, the "selling price" on which the tax is computed shall be reduced by an amount which represents a reasonable allowance for depreciation for the period of such prior out-of-State use.

b) On and after January 1, 2001, prepaid telephone calling arrangements shall be considered tangible personal property subject to the tax imposed under this Act regardless of the form in which those arrangements may be embodied, transmitted, or fixed by any method now known or hereafter developed. (Section 3 of the Act) "Prepaid telephone calling arrangements" means the right to exclusively purchase telephone or telecommunications services that must be paid for in advance and enable the origination of one or more intrastate, interstate, or international telephone calls or other telecommunications using an access number, an authorization code, or both, whether manually or electronically dialed, for which payment to a retailer must be made in advance, provided that, unless recharged, no further service is provided once that prepaid amount of service has been consumed. Prepaid telephone calling arrangements include the recharge of a prepaid calling arrangement. For purposes of this

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Section, "recharge" means the purchase of additional prepaid telephone or telecommunications services whether or not the purchaser acquires a different access number or authorization code. For purposes of this Section, "telecommunications" means that term as defined in Section 2 of the Telecommunications Excise Tax Act [35 ILCS 630]. "Prepaid telephone calling arrangement" does not include an arrangement whereby the service provider reflects the amount of the purchase as a credit on an account for a customer under an existing subscription plan. (Section 3-27 of the Act)

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)



## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF ADOPTED RULES

- 1) Heading of the Part: Children's Product Safety
- 2) Code of Citation: 89 Ill. Adm. Code 386
- 3) Section Numbers:      Adopted Action:

386.10	New
386.20	New
386.30	New
386.40	New
- 4) Statutory Authority: The Child Care Act of 1969 [225 ILCS 10/5.2] and the Children's Product Safety Act [430 ILCS 125].
- 5) Effective Date of Rule: November 1, 2000
- 6) Does this rule contain an automatic repeal date?
- 7) Does this rule contain incorporations by reference? No
- 8) A copy of the adopted rule, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: March 31, 2000, 24 Ill. Reg. 5036
- 10) Has JCAR issued a Statement of Objections to this rule? No
- 11) Differences between proposal and final version: The only changes made are those editing and formatting changes recommended by the Joint Committee on Administrative Rules. Those changes, and only those changes, will be made by the Department in the adopted rule.

- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements? Yes

- 13) Will this rule replace an emergency rule currently in effect? No

- 14) Are there any amendments pending on this Part? No

- 15) Summary and Purpose of Rule: Part 386 implements Section 5.2 of the Child Care Act prohibiting any child care facility from having on its premises any unsafe children's product, as defined by the Children's Product Safety Act, on or after July 1, 2000. The Department is required to notify child care facilities, on an ongoing basis, of unsafe children's products, as determined in accordance with the Children's Product Safety Act, in plain, non-technical language that will enable each child care facility to effectively inspect children's products and identify unsafe children's

## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF ADOPTED RULES

products.

- 16) Information and questions regarding the adopted rule shall be direct to:

Mr. Jeff Oswowski  
 Office of Child and Family Policy  
 Department of Children and Family Services  
 406 E. Monroe, Station #65  
 Springfield, Illinois 62703-1498  
 Telephone: (217) 524-1983  
 TDD: (217) 524-3715  
 E-Mail: cfpolicy@idcfs.state.il.us

The full text of the adopted rule begins on the next page.

## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF ADOPTED RULES

TITLE 99: SOCIAL SERVICES  
 CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES  
 SUBCHAPTER d: LICENSING ADMINISTRATION

PART 386  
 CHILDREN'S PRODUCT SAFETY

Section 386.10	Purpose
386.20	Definitions
386.30	General Requirements
386.40	Licensing Compliance

AUTHORITY: Implementing and authorized by the Child Care Act of 1969 [225 ILCS 10/5.2] and the Children's Product Safety Act [430 ILCS 125].

SOURCE: Adopted at 24 Ill. Reg. 17405, effective 11/1/95.

## Section 386.10 Purpose

The purpose of this Part is to ensure:

- that all child care facilities licensed by the Department are aware of the provisions of the Children's Product Safety Act that apply to them.
- that all child care facilities licensed by the Department conduct ongoing surveys of their premises for any unsafe children's products.
- that all child care facilities licensed by the Department have applied the appropriate remedy to any unsafe children's product discovered on their premises pursuant to the Children's Product Safety Act.

## Section 386.20 Definitions

"Child care facility" means any person, group of persons, agency, association or organization, whether established for gain or otherwise, who or which receives or arranges for care or placement of one or more children, unrelated to the operator of the facility, apart from the parents, with or without the transfer of the right of custody, in any facility as defined in the Child Care Act of 1969, established and maintained for the care of children. "Child care facility" includes a relative who is licensed or who applies for a license as a foster family home under Section 4 of the Child Care Act of 1969. (Section 2.05 of the Child Care Act of 1969)

"Children's product" means a product, including but not limited to a full-size crib, non-full-size crib, toddler bed, bed, car seat, chair, high chair, booster chair, hook-on chair, bath seat, gate or other enclosure for confining a child, play yard, stationary activity

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center, carrier, stroller, walker, swing, or toy or play equipment, that meets the following criteria:

- the product is designed or intended for the care of, or use by, children under 6 years of age or is designed or intended for the care of, or use by, both children under 6 years of age and children 6 years of age or older; and
- the product is designed or intended to come into contact with the child while the product is used.

Notwithstanding any other provision of this definition, a product is not a "children's product" for purposes of the Children's Product Safety Act if:

- it may be used by or for the care of a child under 6 years of age, but it is designed or intended for use by the general population or segments of the general population and not solely or primarily for use by, or the care of, a child; or
- it is a medication, drug, or food or is intended to be ingested. [430 ILCS 125/10]

"Crib" means a bed or containment designed to accommodate an infant. [430 ILCS 125/10]

"Department" means the Illinois Department of Children and Family Services. (Section 2.02 of the Child Care Act of 1969)

"Full-size crib" means a full-size crib as defined in Section 1508.3 of Title 16 of the Code of Federal Regulations regarding the requirements for full-size cribs. [430 ILCS 125/10]

"Infant", for the purposes of this Part, means any person less than 35 inches tall and less than 3 years of age. [430 ILCS 125/10]

"Licensee" means those individuals, agencies, or organizations who hold a license or permit issued by the Department of Children and Family Services.

"Licensing representative" means persons authorized by the Department under the Child Care Act of 1969 to examine facilities for licensure.

"Non-full-size crib" means a non-full-size crib as defined in Section 1509.2 of Title 16 of the Code of Federal Regulations regarding the requirements for non-full-size cribs. [430 ILCS 125/10]

"Person" means a natural person, firm, corporation, limited liability

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company, or association, or an employee or agent of a natural person or an entity included in this definition. [430 ILCS 125/10]

**Section 386.30 General Requirements**

## a) Notification

The Department of Children and Family Services shall, on or before July 1, 2000, notify all licensed child care facilities of the applicable provisions of the Children's Product Safety Act.

## b) Information to be Provided

1) Facilities licensed at the time of the initial notification will receive:

A) A written explanation of the relevant provisions of Section 5.2 of the Child Care Act and the Children's Product Safety Act in plain, non-technical language.

B) A comprehensive list of children's products that have been identified by the Illinois Department of Public Health as being unsafe as defined in the Children's Product Safety Act.

C) Periodic updates of the Illinois Department of Public Health's list.

2) Facilities licensed after the date of the initial notification will receive as part of their initial licensing materials:

A) A written explanation of the relevant provisions of Section 5.2 of the Child Care Act and the Children's Product Safety Act in plain, non-technical language.

B) The comprehensive list sent to providers who were licensed at the time of the initial mailing and any periodic update sent before the initial application for licensure.

C) Periodic updates of the Illinois Department of Public Health's list.

**Section 386.40 Licensing Compliance**

## a) Responsibility of Child Care Facilities

1) Upon notification of the provisions of the Children's Product Safety Act, either during the initial notification process or later as part of the new licensee's application process and with each periodic update, the facility shall inspect its premises and immediately dispose of any unsafe children's products discovered.

2) This inspection shall be documented by signing and dating the Department's initial notification and periodic updates in the space so designated on the notification.

3) The signed notification and any periodic updates shall be maintained in the facility's files for inspection.

## b) Responsibility of the Department

1) During the initial or renewal licensing review, the licensing representative shall document that the facility maintains the

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signed and dated notifications required in this Section.

2) Upon discovering any unsafe children's product, the licensing representative shall instruct the facility to immediately dispose of the product in accordance with the Act.

3) A licensing violation shall be substantiated if a facility has failed to dispose of an unsafe children's product after being made aware of it through the written notification described in this Part.



## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Licensing Standards for Child Care Institutions and Maternity Centers
- 2) Code Citation: 89 Ill. Adm. Code 404
- 3) Section Numbers: Adopted Action:  
404.37 Amend
- 4) Statutory Authority: The Child Care Act of 1969 [225 ILCS 10/5.2] and the Children's Product Safety Act [430 ILCS 125].
- 5) Effective Date of Amendments: November 1, 2000
- 6) Does this amendment contain an automatic repeal date? No
- 7) Does this amendment contain incorporations by reference? No
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: March 31, 2000, 24 Ill. Reg. 5042
- 10) Has JCAR issued a Statement of Objection to this amendment? No
- 11) Differences between proposal and final version: The only changes made are those editing and formatting changes recommended by the Joint Committee on Administrative Rules. Those changes, and only those changes, will be made by the Department in the adopted amendment.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this amendment replace an emergency amendment currently in effect?  
No
- 14) Are there any amendments pending on this Part? No

15) Summary and purpose of adopted Amendments: Implements Section 5.2 of the Child Care Act prohibiting any child care facility from having on its premises any unsafe children's product, as defined by the Children's Product Safety Act, on or after July 1, 2000. The Department is required to notify child care facilities, on an ongoing basis, of unsafe children's products, as determined in accordance with the Children's Product Safety Act, in plain, non-technical language that will enable each child care facility to effectively inspect children's products and identify unsafe children's products.

## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF ADOPTED AMENDMENTS

- 16) Information and questions regarding these adopted amendments shall be directed to:

Mr. Jeff Osowski  
Office of Child and Family Policy  
Department of Children and Family Services  
406 E. Monroe, Station #65  
Springfield, Illinois 62703-1498  
(217) 524-1983  
TDD: (217) 524-3715  
E-Mail: cfpolicy@dcfs.state.il.us

The full text of the adopted amendment begins on the next page.

## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF ADOPTED AMENDMENTS

TITLE 89: SOCIAL SERVICES  
 CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES  
 SUBCHAPTER e: REQUIREMENTS FOR LICENSURE

## PART 404

## LICENSING STANDARDS FOR CHILD CARE INSTITUTIONS AND MATERNITY CENTERS

Section	Purpose
404.1	Definitions
404.2	Effective Date of Standards (Repealed)
404.3	Application for License
404.4	Application for Renewal of License
404.5	Provisions Pertaining to License
404.6	Provisions Pertaining to Permits
404.7	Incorporation
404.8	Composition and Responsibilities of the Governing Body
404.9	Finances
404.10	The Administrator
404.11	Administrative Coverage
404.12	Child Care Staff
404.13	Support Personnel
404.14	Substitute Child Care Staff
404.15	Volunteers
404.16	Requirements of Professional Staff
404.17	Medical and Health Services
404.18	Social Work Staff
404.19	Teachers
404.20	Recreation Staff
404.21	Staff Training
404.22	Health Requirements for Staff and Volunteers
404.23	Background Checks
404.24	Criteria for the Admission of Children
404.25	Admission Preparation Requirements
404.26	Agreements and Consents Between Responsible Parties
404.27	Child Care Groupings
404.28	Discipline of Children
404.29	Controls
404.30	Clothing
404.31	Personal Care and Hygiene
404.32	Allowances
404.33	Education
404.34	Work and Training
404.35	Recreation and Leisure Time
404.36	Health and Safety
404.37	Food and Nutrition
404.38	Professional Services
404.39	Visitation
404.40	

## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

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404.41	Community Life
404.42	Religion
404.43	Termination of Residential Care
404.44	Buildings
404.45	Grounds
404.46	Equipment
404.47	Records and Reports
404.48	Records Retention
404.49	Severability of This Part

AUTHORITY: Implementing and authorized by the Child Care Act of 1969 [225 ILCS 10] and the Children's Product Safety Act [430 ILCS 125].

SOURCE: Adopted and codified at 5 Ill. Reg. 13070, effective November 30, 1981; amended at 7 Ill. Reg. 3424, effective April 4, 1983; amended at 8 Ill. Reg. 22870, effective November 15, 1984; amended at 9 Ill. Reg. 19712, effective December 20, 1985; amended at 11 Ill. Reg. 17504, effective October 15, 1987; amended at 21 Ill. Reg. 4488, effective April 1, 1997; amended at 24 Ill. Reg. ~~17434~~, effective ~~11/1/88~~.

## Section 404.37 Health and Safety

- Each child shall be examined by a physician within 30 days prior to placement in the institution unless the placement is an emergency. In an emergency placement, the physical examination shall be scheduled within 5 days after placement and completed with 15 days after placement. In all cases each child shall be screened for communicable diseases within 72 hours.
- Children shall be examined annually or more frequently if findings and medical opinions indicate need. Diagnosed medical problems shall be promptly treated.
- Dental examinations shall be given at least annually. Diagnosed dental defects shall receive prompt treatment; however, recommended orthodonture shall be referred to the child's legal guardian.
- In the absence of any religious exemptions, immunizations and tests shall be administered in accordance with standard medical practices and as required by the Illinois Department of Public Health.
- If treatment is in process for any physical impairment which requires continuing or follow-up medical attention, the parent, guardian or other facility to whom the child is discharged shall be so notified.
- The institution shall have a written plan for use in case of fires and natural disaster. The institution shall conduct fire and disaster drills with staff and children at least once every three months. Records of such drills shall be kept. At least once every six months, a fire marshal or other authority responsible for public safety shall view the drills.
- Household pets shall be inoculated as required by state and local regulations.

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- h) No firearms or ammunition shall be allowed in the institution.  
 i) The facility may not use or have on the premises, on or after July 1, 2000, any unsafe children's product as described in the Children's Product Safety Act and 89 Ill. Adm. Code 386 (Children's Product Safety).

(Source: Amended at 24 Ill. Reg. 17.8, effective 1/1/99)

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Licensing Standards for Day Care Centers
- 2) Code Citation: 89 Ill. Adm. Code 407
- 3) Section Numbers: Adopted Action:  
 407.380 Amend  
 407.390 Amend
- 4) Statutory Authority: The Child Care Act of 1969 [225 ILCS 10/5.2] and the Children's Product Safety Act [430 ILCS 125].
- 5) Effective Date of Amendments: November 1, 2000
- 6) Does this amendment contain an automatic repeal date? No
- 7) Does this amendment contain incorporations by reference? No
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: March 31, 2000, 24 Ill. Reg. 5047
- 10) Has JCAR issued a Statement of Objection to this amendment? No
- 11) Differences between proposal and final version: The only changes made are those editing and formatting changes recommended by the Joint Committee on Administrative Rules. Those changes, and only those changes, will be made by the Department in the adopted amendment.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this amendment replace an emergency amendment currently in effect?  
 No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Amendments: Implements Section 5.2 of the Child Care Act prohibiting any child care facility from having on its premises any unsafe children's product, as defined by the Children's Product Safety Act, on or after July 1, 2000. The Department is required to notify child care facilities, on an ongoing basis, of unsafe children's products, as determined in accordance with the Children's Product Safety Act, in plain, non-technical language that will enable each child care facility to effectively inspect children's products and identify unsafe children's products.



## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF ADOPTED AMENDMENTS

- 16) Information and questions regarding these adopted amendments shall be directed to:

Mr. Jeff Osowski  
Office of Child and Family Policy  
Department of Children and Family Services  
406 E. Monroe, Station #65  
Springfield, Illinois 62703-1498  
Telephone: (217) 524-1983  
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The full text of the adopted amendment begins on the next page.

## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF ADOPTED AMENDMENTS

TITLE 89: SOCIAL SERVICES  
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES  
SUBCHAPTER e: REQUIREMENTS FOR LICENSURE

## PART 407

## LICENSING STANDARDS FOR DAY CARE CENTERS

Section	
407.1	Purpose (Repealed)
407.2	Definitions (Repealed)
407.3	Effective Date of Standards (Repealed)
407.4	Application for License (Repealed)
407.5	Application for Renewal of License (Repealed)
407.6	Provisions Pertaining to the License (Repealed)
407.7	Provisions Pertaining to Permits (Repealed)
407.8	Organization and Administration (Repealed)
407.9	Finances (Repealed)
407.10	General Requirements for Personnel (Repealed)
407.11	Child Care Director (Repealed)
407.12	Child Care Workers and Group Workers (Repealed)
407.13	Child Care Assistants (Repealed)
407.14	Use of Students (Repealed)
407.15	Service Staff (Repealed)
407.16	Substitutes and Volunteers (Repealed)
407.17	Background Inquiry (Repealed)
407.18	Admission and Discharge Procedures (Repealed)
407.19	Discipline (Repealed)
407.20	Personal Care and Hygiene (Repealed)
407.21	Program (Repealed)
407.22	Equipment and Materials (Repealed)
407.23	Grouping and Staffing (Repealed)
407.24	Nutrition (Repealed)
407.25	Night Care (Repealed)
407.26	Children with Special Needs (Repealed)
407.27	Infants and Toddlers (Repealed)
407.28	School-Age Children (Repealed)
407.29	Health Requirements for Children (Repealed)
407.30	Transportation (Repealed)
407.31	Plant and Equipment (Repealed)
407.32	Records and Reports (Repealed)
407.33	Confidentiality of Records and Information (Repealed)
407.34	Records Retention (Repealed)
407.35	Severability of This Part (Renumbered)

## SUBPART A: INTRODUCTION, DEFINITIONS AND APPLICABILITY

Section  
407.40

Purpose and Applicability

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- 407.45 Definitions
- SUBPART B: PERMITS AND LICENSES
- 407.50 Application for License
- 407.55 Application for Renewal of License
- 407.60 Provisions Pertaining to the License
- 407.65 Provisions Pertaining to Permits

SUBPART C: ADMINISTRATION

- 407.70 Organization and Administration
- 407.80 Confidentiality of Records and Information

SUBPART D: STAFFING

- 407.90 Staffing Structure
- 407.100 General Requirements for Personnel
- 407.110 Background Checks for Personnel
- 407.120 Personnel Records
- 407.130 Qualifications for Child Care Director
- 407.140 Qualifications for Early Childhood Teachers and School-age Workers
- 407.150 Qualifications for Early Childhood Assistants and School-age Worker Assistants
- 407.160 Students and Youth Aides
- 407.170 Substitutes
- 407.180 Volunteers
- 407.190 Grouping and Staffing

SUBPART E: PROGRAM REQUIREMENTS

- 407.200 Program Requirements for All Ages
- 407.210 Special Requirements for Infants and Toddlers
- 407.220 Special Requirements for School-Age Children
- 407.230 Intergenerational Programs
- 407.240 Evening, Night, Weekend and Holiday Care

SUBPART F: STRUCTURE AND SAFETY

- 407.250 Enrollment and Discharge Procedures
- 407.260 Daily Arrival and Departure of Children
- 407.270 Guidance and Discipline
- 407.280 Transportation
- 407.290 Swimming and Wading
- 407.300 Animals

SUBPART G: HEALTH AND HYGIENE

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- 407.310 Health Requirements for Children
- 407.320 Hand Washing
- 407.330 Nutrition and Meal Service
- 407.340 Diapering and Toileting Procedures
- 407.350 Napping and Sleeping
- 407.360 Medications

SUBPART H: FACILITY AND EQUIPMENT

- 407.370 Physical Plant/Indoor Space
- 407.380 Equipment and Materials
- 407.390 Outdoor Play Area

SUBPART I: SEVERABILITY OF THIS PART

- 407.400 Severability of This Part
- APPENDIX A Equipment for Infants and Toddlers
- APPENDIX B Equipment for Preschool Children
- APPENDIX C Equipment for School-Age Children
- APPENDIX D Infant Daily Food Requirements
- APPENDIX E Meal Patterns and Serving Sizes for Child Care Programs
- APPENDIX F Resource Reference List
- APPENDIX G Early Childhood Teacher Credentialing Programs
- APPENDIX H Playground Surfacing and Critical Height

**AUTHORITY:** Implementing and authorized by the Child Care Act of 1969 [225 ILCS 10] and the Children's Product Safety Act [430 ILCS 125].

**SOURCE:** Adopted and codified at 7 Ill. Reg. 9215, effective August 15, 1983; amended at 8 Ill. Reg. 8713, effective June 15, 1984; amended at 8 Ill. Reg. 24937, effective January 1, 1985; amended at 16 Ill. Reg. 7597, effective April 30, 1992; emergency amendment at 20 Ill. Reg. 11366, effective August 1, 1996, for a maximum of 150 days; emergency expired December 28, 1996; amended at 21 Ill. Reg. 923, effective January 15, 1997; amended at 22 Ill. Reg. 1728, effective January 1, 1998; amended at 24 Ill. Reg. 1743, effective July 1, 2000.

**Section 407.380 Equipment and Materials**

- a) Equipment and materials for both indoor and outdoor use shall be appropriate to the age and developmental needs of the children served. The day care center may not use or have on the premises, on or after July 1, 2000, any unsafe children's product as described in the Children's Product Safety Act and 89 Ill. Adm. Code 386 (Children's Product Safety).
- b) Such equipment and materials for infants, toddlers and pre-school children shall be provided in the quantity and variety specified in Appendix A: Equipment for Infants and Toddlers, Appendix B: Equipment

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for Preschool Children and Appendix C: Equipment for School-Age Children.

c) The day care center shall have a method to communicate with persons who are hearing impaired such as a telecommunication device for the deaf (TDD) or the Illinois Relay Center (see Appendix F). Furniture and equipment shall be adapted, when necessary, for individual children's use.

d) Play materials shall be durable and free from hazardous characteristics, including sharp or rough edges and toxic paint. In areas where infants and toddlers play and sleep, there shall be no objects that are less than 1 1/4 inches in diameter or that have removable parts of this size.

e) Durable, safe and appropriately sized furnishings and equipment shall be provided, including:

1) Chairs and benches of appropriate size for each age group served.

If chairs or benches are upholstered or padded, the furniture must meet the requirements of the Furniture Fire Safety Act [425 ILCS 45] and 41 Ill. Adm. Code 1007 [Fire Prevention and Safety] and 41 Ill. Adm. Code 3007 [Furniture Fire Safety Regulations].

2) Tables of height and size to accommodate comfortably a group of ten or fewer children.

3) Low, open shelves for play materials and books within easy reach of the children.

4) Individual lockers, cubicles or separate hooks and shelves for children's personal belongings.

f) Storage shall be provided for surplus toys and supplies not currently in use.

g) Equipment, table tops, play materials and classroom surfaces shall be maintained in sound, clean conditions at all times.

1) Toys and equipment that are placed in children's mouths or are otherwise contaminated by body secretions or excretions shall be set aside to be cleaned with water and detergent, rinsed, sanitized and air-dried before handling by another child. Machine-washable cloth toys may be used and shall be machine-washed at least weekly and when contaminated.

2) Water tables and toys used in water tables shall be emptied daily and cleaned with a mild germicidal solution before being air-dried. Children and staff shall wash their hands before using the water table.

h) Extension cords meeting Underwriters Laboratories or equivalent standards may be used provided that they are inaccessible to children and do not present any safety hazard.

i) Poisonous or potentially harmful plants shall be inaccessible to children.

j) First-aid kits shall be maintained and readily available for use.

1) Centers with a capacity of fewer than 100 children shall maintain at least two first-aid kits, a kit for on-site use and a travel kit for use on outings. Centers with a capacity of 100 or more

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children shall maintain at least three first-aid kits.

2) When a program operates in various parts of a building or on more than one floor, a separate first-aid kit shall be maintained in each area or floor.

3) The supplies for each first-aid kit shall be stored in a closed container which is clearly labeled as first-aid supplies and stored in a place that is accessible to child care staff at all times but out of the reach of children.

4) The on-site first-aid kits shall contain the following supplies, at minimum:

A) Disposable latex gloves;

B) Scissors;

C) Tweezers;

D) Thermometer;

E) Bandage tape;

F) Sterile gauze pads;

G) Flexible roller gauze;

H) Triangular bandage;

I) Safety pins;

J) Eye dressing;

K) Pen/pencil and note pad;

L) Cold pack;

M) Adhesive bandages; and

N) Current American Academy of Pediatrics or American Red Cross standard first-aid text or an equivalent first-aid guide.

5) The travel first-aid kits for use on outings shall contain the above supplies (a first-aid chart may replace the required text) plus the following additional items:

A) Water;

B) Soap;

C) Antiseptic cream or solution;

D) Telephone number of the child care center (preferably on a laminated card); and

E) Coins for use in a pay phone.

6) First-aid kits shall be restocked after use, and an inventory shall be taken at least annually and recorded.

7) In addition to the full first-aid kit maintained at the center, each individual classroom shall stock a supply of latex gloves and adhesive bandages and restock these supplies as needed.

8) The telephone number for Poison Control shall be posted at each telephone (1-800-942-5969).

k) Day care centers are not required to have a portable fire extinguisher. However, if the day care center installs a portable fire extinguisher of its own volition, the extinguisher must be installed, tested, maintained, and tagged by businesses licensed by the Office of the State Fire Marshal under the Fire Equipment Distributor and Employee Regulation Act [225 ILCS 215] and 41 Ill. Adm. Code 2507 [Fire Equipment Distributor and Employee Standards].



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(Source: Amended at 24 Ill. Reg. ~~17043~~, effective ~~1-1-98~~)

**Section 407.390 Outdoor Play Area**

- a) An outdoor play area shall be provided unless the program operates less than three hours per day in accordance with Section 407.200(d)(3) or a waiver has been granted by the Department in accordance with subsection (q) of this Section.
- b) The requirements for outdoor play areas shall be met immediately, except for equipment and protective surfaces installed by the center before the effective date of this Part, and shall fully comply with this Part no later than 36 months after the effective date. Fences around play areas which are newly installed or replaced after the effective date of this Part must comply with the requirements of this Section.
- c) The outdoor play area shall accommodate 25 percent of the licensed capacity at any one time, ~~but shall be no less than 1,500 square feet of useable activity/play space.~~
- d) There shall be a minimum of 75 square feet of safe outdoor area per child for the total number of children using the area at any one time. Children under the age of 24 months shall not use a common outdoor play area at the same time as children ages three or older.
- e) Play space shall be in a well-drained area.
- f) All play space shall be fenced or otherwise enclosed or protected from traffic and other hazards. Fences shall be at least 48 inches in height (for fences installed or replaced after January 1, 1998). Fences shall be constructed in such a way that children cannot exit without adult supervision. Corral-type fences and fences made of chicken wire shall not be used. Play areas for children under two years of age shall be enclosed so that the bottom edge is no more than 3 1/2 inches above the ground and openings in the fence are no greater than 3 1/2 inches.
- g) The outdoor play area shall be adequately protected from traffic, water hazards, electrical transformers, toxic gases and fumes, railway tracks and animal hazards.
- h) The outdoor play area shall be arranged so that all areas are visible to staff at all times.
- i) Protective surfaces (wood mulch, bark mulch, sand, gravel, rubber mats, etc.) shall be provided in areas where climbing, sliding, swinging or other equipment from which a child might fall is located.
  - 1) The protective surface shall extend at least six feet beyond the perimeter of the equipment, except for swings.
    - A) For single-axis (traditional) swings, the protective surface shall extend both forward and backward a distance of at least two times the height measured from the supporting bar.
    - B) For tire swings which rotate, the protective surface shall extend six feet beyond the farthest reach of the tire in all

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directions.

- 2) The protective surface shall have a Critical Height value of at least the height of the highest accessible part of the equipment, unless rubber mats are used which have been manufactured specifically for this purpose and which comply with the requirements established by the Consumer Products Safety Commission or the American Society for Testing Materials. See Appendix H for Critical Height values.
- 3) The surface material shall be properly drained to prevent the growth of molds and bacteria.
- 4) When resilient materials become packed, they shall be raked and/or turned to restore resilience.
- j) A surface shall be provided that is suitable for children's wheeled vehicles and pull toys.
- k) There shall be a shaded area in the summer to protect children from excessive sun exposure. Equipment with smooth metal surfaces, such as slides, shall be in an area that is shaded during the summer or shall be placed in a north/south alignment. Equipment permanently affixed on January 1, 1998 shall be accepted if otherwise determined safe. Procedures shall be in place to prevent children from being burned if the metal surface is too hot.
- l) Play areas and play equipment shall be maintained in a safe, clean and sanitary manner.
  - 1) The equipment in the outdoor play area shall be of safe design and in good repair.
  - 2) The equipment shall be free of sharp points or corners, splinters, protruding nails or bolts, loose or rusty parts, hazardous small parts, broken glass, lead-based paint or other poisonous materials.
  - 3) All bolts, hooks, eyes, shackles, rungs and other connecting and linking devices used on playground equipment shall be designed and secured to prevent loosening or unfastening.
  - 4) Outdoor equipment shall be situated to avoid collisions and accidents while still permitting freedom of action by the children.
  - 5) Supports for climbing apparatus and large equipment shall be securely fastened to the ground.
  - 6) Access to play equipment shall be limited to age groups for which the equipment is developmentally appropriate according to the manufacturer's instructions.
  - 7) Swings, if used, shall have seats of rubber or impact-absorbing material and design. Wood or metal seats shall not be used.
  - 8) Crawl spaces, such as tunnels, shall be short and wide enough to permit access by adults.
  - 9) All pieces of playground equipment used by children five years of age and younger shall be designed to guard against entrapment or situations that may cause strangulation.
    - A) Openings in exercise rings shall be smaller than 4 1/2

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inches or larger than nine inches in diameter.

- B) There shall be no openings in a play structure with a dimension between 3 1/2 inches and 9 inches (except for exercise rings). Side railings, stairs and other locations that a child might slip or climb through shall be checked for appropriate dimensions.

- C) Distances between vertical slats or poles, where used, must be 3 1/2 inches or less (to prevent head entrapment).

- D) No opening shall form an angle of less than 55° unless one leg of the angle is horizontal or slopes downward.

- E) No opening shall be between 3/8 inch and one inch in size (to prevent finger entrapment).

- 10) Sandboxes, if smaller than 100 square feet, shall be covered when not in use. Larger sand play areas shall be covered, or there shall be a written plan for the daily raking and cleaning of animal fecal matter, if present.

- 11) Areas for sand play shall be distinct from the landing areas surrounding slides and other equipment.

- m) The center director or designee shall inspect the playground daily before children go out to play to ensure there are no hazards present.

- n) Prior approval of the Department is required when play space not connected with the center is used to meet the requirements of subsections (a) through (l) of this Section in lieu of the center's own play space. Proposed use of a nearby park, school yard or other alternative shall be considered on a case-by-case basis in consultation with local health and safety officials, with consideration given to the following criteria:

- 1) Location;
- 2) Accessibility to children and staff by foot or the availability of push carts or other means of transporting infants and toddlers;

- 3) Age(s) of the children in the group(s);

- 4) Availability of appropriate equipment;

- 5) Traffic patterns of vehicles and people in the area;

- 6) Condition of the park in areas related to safety;

- 7) Usage of the park by other groups when the children would be most likely to use it;

- 8) Compliance with the requirements of subsections (a) through (m) of this Section.

- o) If an area not connected with the center is used for play or recreation, the children shall be closely supervised both during play and while traveling to and from the area.

- p) Roof-top playgrounds are permissible only if the playground is completely surrounded by a non-climbable fence at least eight feet in height which has no openings of any kind, a structural clearance for the use of the roof as a play area has been obtained, and the Office of the State Fire Marshal or the Chicago Fire Department's Fire Prevention Bureau has approved in writing the use of the roof as a

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playground.

- q) The Department may grant a waiver of the outdoor play area requirement under the following conditions:

- 1) The facility is located in an urban area where suitable, safe outdoor space is not available;
- 2) The facility has an indoor activity room that provides 75 square feet per child for at least 25% of the licensed capacity of the facility and is used for gross motor play in lieu of outdoor space; and
- 3) Parents are given notification of this waiver in writing upon enrollment of their children.

(Source: Amended at 24 Ill. Reg. 117.36, effective 1/1/00)

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## NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Licensing Standards for Day Care Homes
- 2) Code Citation: 89 Ill. Adm. Code 406
- 3) Section Numbers: Adopted Action:  
406.16 Amend
- 4) Statutory Authority: The Child Care Act of 1969 [225 ILCS 10/5.2] and the Children's Product Safety Act [430 ILCS 125].
- 5) Effective Date of Amendments: November 1, 2000
- 6) Does this amendment contain an automatic repeal date? No
- 7) Does this amendment contain incorporations by reference? No
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: March 31, 2000, 24 Ill. Reg. 5058
- 10) Has JCARE issued a Statement of Objection to this rulemaking? No
- 11) Differences between proposal and final version: The only changes made are those editing and formatting changes recommended by the Joint Committee on Administrative Rules. Those changes, and only those changes, will be made by the Department in the adopted amendment.
- 12) Have all the changes agreed upon by the agency and JCARE been made as indicated in the agreements? Yes
- 13) Will this amendment replace an emergency amendment currently in effect?  
No
- 14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Amendments: Implements Section 5.2 of the Child Care Act prohibiting any child care facility from having on its premises any unsafe children's product, as defined by the Children's Product Safety Act, on or after July 1, 2000. The Department is required to notify child care facilities, on an ongoing basis, of unsafe children's products, as determined in accordance with the Children's Product Safety Act, in plain, non-technical language that will enable each child care facility to effectively inspect children's products and identify unsafe children's products.

## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF ADOPTED AMENDMENTS

- 16) Information and questions regarding these adopted amendments shall be directed to:

Mr. Jeff Osowski  
Office of Child and Family Policy  
Department of Children and Family Services  
406 E. Monroe, Station #65  
Springfield, Illinois 62703-1498  
(217) 524-1983  
TDD: (217) 524-3715  
E-Mail: cfpolicy@dcfs.state.il.us

The full text of the adopted amendment begins on the next page:



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## NOTICE OF ADOPTED AMENDMENTS

TITLE 89: SOCIAL SERVICES  
 CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES  
 SUBCHAPTER e: REQUIREMENTS FOR LICENSURE

## PART 406

## LICENSING STANDARDS FOR DAY CARE HOMES

## Section

406.1	Purpose
406.2	Definitions
406.3	Effective Date of Standards (Repealed)
406.4	Application for License
406.5	Application for Renewal of License
406.6	Provisions Pertaining to the License
406.7	Provisions Pertaining to Permits
406.8	General Requirements for Day Care Homes
406.9	Characteristics and Qualifications of the Day Care Family
406.10	Qualifications for Assistants
406.11	Substitutes
406.12	Admission and Discharge Procedures
406.13	Number and Ages of Children Served
406.14	Health and Medical Care
406.15	Discipline of Children
406.16	Activity Requirements
406.17	Nutrition and Meals
406.18	Transportation of Children By Day Care Home
406.19	Swimming
406.20	Children with Special Needs
406.21	School Age Children
406.22	Children Under 30 Months of Age
406.23	Night Care
406.24	Records and Reports
406.25	Confidentiality of Records and Information
406.26	Cooperation with the Department
406.27	Severability of This Part
APPENDIX A	Meal Pattern Chart for: Children 0 to 12 Months of Age
APPENDIX B	Meal Pattern Chart for: Children Over One Year of Age
APPENDIX C	Background of Abuse, Neglect, or Criminal History Which May Prevent Licensure or Employment in a Day Care Home

AUTHORITY: Implementing and authorized by the Child Care Act of 1969 [225 ILCS 10], the Children's Product Safety Act [430 ILCS 125], Section 3 of the Abused and Neglected Child Reporting Act [325 ILCS 5/31], and Sections 1 and 2 of the Facilities Requiring Smoke Detectors Act [425 ILCS 10/1 and 2].

SOURCE: Adopted and codified at 7 Ill. Reg. 7855, effective July 1, 1983; amended at 8 Ill. Reg. 24951, effective January 1, 1985; amended at 9 Ill. Reg. 2454, effective March 1, 1985; emergency amendment at 15 Ill. Reg. 15088,

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effective October 8, 1991, for a maximum of 150 days; modified at 16 Ill. Reg. 2269; amended at 16 Ill. Reg. 7602, effective April 30, 1992; amended at 18 Ill. Reg. 5531, effective April 1, 1994; amended at 19 Ill. Reg. 2765, effective February 23, 1995; amended at 21 Ill. Reg. 4524, effective April 1, 1997; emergency amendment at 24 Ill. Reg. 4207, effective March 1, 2000, for a maximum of 150 days; emergency expired July 28, 2000; amended at 24 Ill. Reg. 1766, effective \_\_\_\_\_.

## Section 406.16 Activity Requirements

- a) The caregiver and parent shall discuss the child's health, development, behavior and activities to ensure consistency in planning for the child.
- b) The daily activities shall be well-balanced and geared to the needs of the children served.
  - 1) The activities shall be informal, providing a family atmosphere that promotes the physical and emotional well-being of the individual.
  - 2) Children shall be encouraged to participate in age appropriate household routines such as preparing food, setting tables, and cleaning up.
  - 3) Regularity in routines such as, but not limited to, eating, napping, and toileting, with sufficient flexibility to respond to the needs of the individual shall be provided.
  - 4) A balance of active and quiet play shall be provided.
  - 5) There shall be activities, both indoors and outdoors, in which children make use of both large and small muscles.
  - 6) There shall be a variety of chores and activities at the child's developmental level.
  - 7) Each child's individuality shall be respected and a sense of self and development of self esteem shall be encouraged.
  - 8) Children shall not be left unattended and supervision shall be provided at all times.
- c) The materials and equipment and their arrangements and use must be appropriate to the developmental needs of the children in care. The day care home may not use or have on the premises, on or after July 1, 2000, any unsafe children's product as described in the Children's Product Safety Act and 89 Ill. Adm. Code 386 (Children's Product Safety).
  - 1) Simple play equipment, suitable to the age and developmental needs of the children, shall be available for use indoors and outdoors.
  - 2) Materials and toys shall be kept clean, orderly, attractive, and accessible to the children.
  - 3) There shall be stimulating play and learning materials; these may include household items used creatively.
  - 4) Materials and equipment must be of sufficient quantity to provide for a variety of experiences and to appeal to the individual

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interests of the children under care.

(Source: Amended at 24 Ill. Reg. effective

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NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Licensing Standards for Foster Family Homes
- 2) Code Citation: 89 Ill. Adm. Code 402
- 3) Section Numbers: Proposed Action:  
402.8 Amend
- 4) Statutory Authority: The Child Care Act of 1969 [225 ILCS 10/5.2] and the Children's Product Safety Act [430 ILCS 125].
- 5) Effective Date of Amendments: November 1, 2000
- 6) Does this amendment contain an automatic repeal date? No
- 7) Does this amendment contain incorporations by reference? No
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: March 31, 2000, 24 Ill. Reg. 5036
- 10) Has JCAR issued a Statement of Objection to this amendment? No
- 11) Differences between proposal and final version: The only changes made are those editing and formatting changes recommended by the Joint Committee on Administrative Rules. Those changes, and only those changes, will be made by the Department in the adopted amendment.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this amendment replace an emergency amendment currently in effect?  
No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Amendments: Implements Section 5.2 of the Child Care Act prohibiting any child care facility from having on its premises any unsafe children's product, as defined by the Children's Product Safety Act, on or after July 1, 2000. The Department is required to notify child care facilities, on an ongoing basis, of unsafe children's products, as determined in accordance with the Children's Product Safety Act, in plain, non-technical language that will enable each child care facility to effectively inspect children's products and identify unsafe children's products.

## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF ADOPTED AMENDMENTS

- 16) Information and questions regarding these adopted amendments shall be directed to:

Mr. Jeff Osowski  
Office of Child and Family Policy  
Department of Children and Family Services  
406 E. Monroe, Station #65  
Springfield, Illinois 62703-1498  
Telephone: (217) 524-1983  
TDD: (217) 524-3715  
E-Mail: cfpolicy@dcfs.state.il.us

The full text of the adopted amendment begins on the next page.

## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF ADOPTED AMENDMENTS

TITLE 89: SOCIAL SERVICES  
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES  
SUBCHAPTER e: REQUIREMENTS FOR LICENSURE

## PART 402

## LICENSING STANDARDS FOR FOSTER FAMILY HOMES

Section	Purpose
402.1	Definitions
402.2	Effective Date of Standards (Repealed)
402.3	Application for License
402.4	Application for Renewal of License
402.5	Provisions Pertaining to Permits
402.6	Provisions Pertaining to the License
402.7	General Requirements for the Foster Home
402.8	Requirements for Sleeping Arrangements
402.9	Nutrition and Meals
402.10	Business and Employment of Foster Family
402.11	Qualifications of Foster Parents
402.12	Background Inquiry
402.13	Health of Foster Family
402.14	Number and Ages of Children Served
402.15	Meeting Basic Needs of Children
402.16	Health Care of Children
402.17	Religion
402.18	Recreation and Leisure Time
402.19	Education
402.20	Discipline of Children
402.21	Emergency Care of Children
402.22	Release of Children
402.23	Confidentiality of Information
402.24	Required Written Consents
402.25	Records to be Maintained
402.26	Licensing Supervision
402.27	Adoptive Homes
402.28	Severability of This Part
402.29	

## APPENDIX A

Criminal Convictions Which Prevent Licensure

## APPENDIX B

Number and Ages of Children in Foster Family Home: No Child

## APPENDIX C

Requires Specialized Care

## APPENDIX D

Number and Ages of Children in Foster Family Home: Child

## APPENDIX E

Requires Specialized Care

AUTHORITY: Implementing and authorized by the Child Care Act of 1969 [225 ILCS 10] and the Children's Product Safety Act [430 ILCS 125].

SOURCE: Adopted and codified at 5 Ill. Reg. 9548, effective October 1, 1981;



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emergency amendment at 6 Ill. Reg. 15580, effective December 15, 1982, for a maximum of 150 days; amended at 7 Ill. Reg. 3439, effective April 4, 1983; amended at 7 Ill. Reg. 13858, effective November 1, 1983; amended at 8 Ill. Reg. 23197, effective December 3, 1984; amended at 11 Ill. Reg. 4292, effective March 1, 1987; emergency amendment at 16 Ill. Reg. 11879, effective July 13, 1992, for a maximum of 150 days; amended at 17 Ill. Reg. 267, effective December 21, 1992; emergency amendment at 18 Ill. Reg. 8481, effective May 20, 1994, for a maximum of 150 days; emergency expired on October 17, 1994; amended at 19 Ill. Reg. 1801, effective February 1, 1995; amended at 19 Ill. Reg. 9463, effective July 1, 1995; emergency amendment at 19 Ill. Reg. 10743, effective July 1, 1995, for a maximum of 150 days; emergency expired November 27, 1995; amended at 20 Ill. Reg. 1589, effective January 10, 1996; emergency amendment at 20 Ill. Reg. 3954, effective February 16, 1996, for a maximum of 150 days; emergency expired July 15, 1996; amended at 21 Ill. Reg. 4548, effective April 1, 1997; amended at 22 Ill. Reg. 205, effective December 19, 1997; amended at 23 Ill. Reg. 7877, effective July 15, 1999; emergency amendment at 24 Ill. Reg. 6417, effective March 27, 2000, for a maximum of 150 days; emergency expired August 23, 2000; amended at 24 Ill. Reg. ~~17118~~, effective

## Section 402.8 General Requirements for the Foster Home

- a) The foster home shall be clean, well ventilated, free from observable hazards, properly lighted and heated, and free of fire hazards.
- b) The foster home may not use or have on the premises, on or after July 1, 2000, any unsafe children's product as described in the Children's Product Safety Act and 89 Ill. Adm. Code 386 (Children's Product Safety).
- c) The water supply of the foster family home shall comply with the requirements of the local and state health departments. If the foster family home accepts children under age ten or who are developmentally disabled, the maximum hot water temperature from all showers and bathtubs shall be no more than 115° Fahrenheit. If well water is used, a copy of the Inspection Report and Compliance with Regulations shall be on file with the supervising agency.
- d) Portable space heaters may be used as a supplementary source of heat if they meet safety approval standards (Underwriters Laboratories) and are used in accordance with local and State building and fire codes. Portable space heaters may not be used in rooms where children are sleeping. Portable and fixed space heaters in areas occupied by children shall be separated by fire resistant partitions or barriers to prevent contact with the heater.
- e) Prescription and nonprescription drugs, dangerous household supplies, and dangerous tools shall be kept in a safe place.
- f) Any and all firearms and ammunition shall be locked up at all times and kept in places inaccessible to children. No firearms possessed in violation of a State or federal law or a local government ordinance shall be present in the home at any time. Loaded guns shall not be

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kept in a foster home unless required by law enforcement officers and in accordance with their law enforcement agency's safety procedures.

g) The foster home shall comply with all requirements of the state laws and municipal codes for household pets. Certificates of inoculation for rabies shall be available for inspection.

h) The foster home shall have an operating telephone on the premises unless the supervising agency has approved a written plan detailing the immediate and unrestricted access to such an instrument.

i) The foster home shall have fire and emergency evacuation plans which are to be discussed and routinely rehearsed with the children.

j) Adequate closet and dresser space comparable to that provided to the other children of the household shall be provided for each foster child to accommodate personal belongings.

k) Foster parents shall respect children's rights to privacy while sleeping, toileting and dressing.

(Source: Amended at 24 Ill. Reg. ~~17118~~, effective

## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Licensing Standards for Group Day Care Homes
- 2) Code Citation: 89 Ill. Adm. Code 408
- 3) Section Numbers: 408.85  
Adopted Action: Amend
- 4) Statutory Authority: The Child Care Act of 1969 [225 ILCS 10/5.2] and the Children's Product Safety Act [430 ILCS 125].
- 5) Effective Date of Amendments: November 1, 2000
- 6) Does this amendment contain an automatic repeal date? No
- 7) Does this amendment contain incorporations by reference? No
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

- 9) Notice of Proposal Published in Illinois Register: March 31, 2000, 24 Ill. Reg. 5036

- 10) Has JCAR issued a Statement of Objection to this amendment? No

- 11) Differences between proposal and final version: The only changes made are those editing and formatting changes recommended by the Joint Committee on Administrative Rules. Those changes, and only those changes, will be made by the Department in the adopted rule amendment.

- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes

- 13) Will this amendment replace an emergency amendment currently in effect?  
No

- 14) Are there any amendments pending on this Part? No

- 15) Summary and Purpose of Amendments: Implements Section 5.2 of the Child Care Act prohibiting any child care facility from having on its premises any unsafe children's product, as defined by the Children's Product Safety Act, on or after July 1, 2000. The Department is required to notify child care facilities, on an ongoing basis, of unsafe children's products, as determined in accordance with the Children's Product Safety Act, in plain, non-technical language that will enable each child care facility to effectively inspect children's products and identify unsafe children's products.

## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

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## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF ADOPTED AMENDMENTS

TITLE 89: SOCIAL SERVICES  
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES  
SUBCHAPTER e: REQUIREMENTS FOR LICENSURE

## PART 408

## LICENSING STANDARDS FOR GROUP DAY CARE HOMES

Section	Purpose
408.1	Definitions
408.5	Effective Date of Standards (Repealed)
408.7	Application For License
408.10	Application for Renewal of License
408.15	Provisions Pertaining to the License
408.20	Provisions Pertaining to Permits
408.25	General Requirements for Group Day Care Homes
408.30	General Requirements for Group Day Care Home Family
408.35	Background Checks
408.40	Caregiver(s)
408.45	Child Care Assistant(s)
408.50	Substitute(s)
408.55	Admission and Discharge Procedures
408.60	Number and Ages of Children Served
408.65	Health and Medical Care
408.70	Discipline of Children
408.75	Nutrition and Meals
408.80	Program
408.85	Transportation of Children
408.90	Swimming
408.95	Children with Special Needs
408.100	Children Under 30 Months of Age
408.105	School Age Children
408.110	Night Care
408.115	Records and Reports
408.120	Confidentiality of Records and Information
408.125	Cooperation with the Department
408.130	Severability of This Part
408.135	Meal Pattern Chart for Children 0 to 12 Months of Age
APPENDIX A	Meal Pattern Chart for Children Over One Year of Age
APPENDIX B	Minimum Equipment and Supplies - Preschool Programs
APPENDIX C	Minimum Equipment and Supplies - Infant and Toddler Programs
APPENDIX D	Background of Abuse, Neglect, or Criminal History Which May Prevent Licensure or Employment in a Group Day Care Home
APPENDIX E	

AUTHORITY: Implementing and authorized by the Child Care Act of 1969 [225 ILCS 10], the Children's Product Safety Act [430 ILCS 125], Section 3 of the Abused and Neglected Child Reporting Act [325 ILCS 5/3], and Sections 1 and 2 of the Facilities Requiring Smoke Detectors Act [425 ILCS 10/1 and 2].

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## NOTICE OF ADOPTED AMENDMENTS

SOURCE: Adopted at 13 Ill. Reg. 14828, effective October 1, 1989; emergency amendment at 15 Ill. Reg. 15104, effective October 8, 1991, for a maximum of 150 days; amended at 16 Ill. Reg. 8950, effective May 30, 1992; amended at 18 Ill. Reg. 5540, effective April 1, 1994; amended at 19 Ill. Reg. 2784, effective February 23, 1995; amended at 21 Ill. Reg. 4563, effective April 1, 1997; emergency amendment at 24 Ill. Reg. 4212, effective March 1, 2000, for a maximum of 150 days; emergency expired July 28, 2000; amended at 24 Ill. Reg. 4776, effective 1/1/01.

## Section 408.85 Program

- a) The caregiver and parent shall discuss the child's health, development, behavior and activities to ensure consistency in planning for the child.
- b) The program shall include opportunities for a child to have free choice of activities to play alone, if desired, or with one or several chosen peers.
- c) The facility shall provide a basic program of activities geared to the age levels and developmental needs of the children ~~enrolled~~ served. The daily program shall provide:
  - 1) Informal activities, providing a family atmosphere that promotes the physical and emotional well-being of the individual.
  - 2) Encouragement for children ~~enrolled~~ to participate in age appropriate household routines such as preparing food, setting tables, and cleaning up.
  - 3) Regularity of such routines as eating, napping, and toileting with sufficient flexibility to respond to the needs of individual children;
  - 4) A balance of active and quiet activity;
  - 5) Daily indoor and outdoor activities in which children ~~enrolled~~ make use of both large and small muscles;
  - 6) Occasional trips and activities away from the facility (frequency to be determined by the caregiver);
  - 7) A supervised nap period for children ~~enrolled~~ under six years of age who remain five or more hours. This nap period for the group should not normally exceed two and one-half hours. Children ~~enrolled~~ who remain for as long as four consecutive hours shall have a supervised rest period.
- d) The daily program of the facility shall provide experiences which promote the individual child's growth and well-being and the development of self-help and communication skills, social competence, and positive self-identity.
- e) Program planning shall provide the following:
  - 1) A variety of activities which takes into consideration individual differences in interest, attention span, and physical and intellectual maturity;
  - 2) Sufficient time for activities and routines, so that the children ~~enrolled~~ can manage them and progress at their own



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- developmental rate;
- 3) Sufficient materials and equipment to avoid excessive competition and long waits;
  - 4) Program planning so that the children ~~child(ren)~~ are not always required to move from one activity to another as a total group;
  - 5) A program that avoids long waiting periods between activities and prolonged periods during which the children child(ren) must stand or sit;
  - 6) Provision for privacy through arranging a small, quiet area that is easily accessible to the child who seeks or needs time to be alone; and
  - 7) A variety of chores and activities at the child's developmental level.
  - f) Materials and toys shall be kept clean, orderly, attractive, and accessible to the children child(ren). The group day care home may not use or have on the premises, on or after July 1, 2000, any unsafe children's product as described in the Children's Product Safety Act and 89 Ill. Adm. Code 386 (Children's Product Safety).
  - g) There shall be stimulating play and learning materials; these may include household items used creatively.
  - h) Each child's individuality shall be respected and a sense of self and development of self esteem shall be encouraged.
  - i) Children child(ren) shall not be left unattended and adult supervision shall be provided at all times.
  - j) The program shall take into account the stress and fatigue that result from constant pressures and stimulation of long hours in a group living situation.
  - k) Activity areas, equipment, and materials shall be arranged so that staff can be easily aware of the children's child(ren)'s presence and activity at all times.
  - l) Equipment shall be arranged in orderly, clearly defined areas of interest, with sufficient space in each area for the children to see various activities available to them.

(Source: Amended at 24 Ill. Reg. 17067, effective 1/1/00)

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## NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Licensing Standards for Group Homes
- 2) Code Citation: 89 Ill. Adm. Code 403
- 3) Section Numbers: Adopted Action:  
403.10 Amend
- 4) Statutory Authority: The Child Care Act of 1969 [225 ILCS 10/5.2] and the Children's Product Safety Act [430 ILCS 125].
- 5) Effective Date of Amendments: November 1, 2000
- 6) Does this amendments contain an automatic repeal date? No
- 7) Does this amendments contain incorporations by reference? No
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: March 31, 2000, 24 Ill. Reg. 5036
- 10) Has JCAR issued a Statement of Objections to this rulemaking? No
- 11) Differences between proposal and final version: The only changes made are those editing and formatting changes recommended by the Joint Committee on Administrative Rules. Those changes, and only those changes, will be made by the Department in the adopted amendment.
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- 14) Are there any amendments pending on this Part? No
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DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENTS

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DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENTS

TITLE 89: SOCIAL SERVICES  
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES  
SUBCHAPTER e: REQUIREMENTS FOR LICENSURE

PART 403  
LICENSING STANDARDS FOR GROUP HOMES

Section	Purpose
403.1	Definitions
403.2	Effective Date of Standards (Repealed)
403.3	Application for License
403.4	Application for Renewal of License
403.5	Provisions Pertaining to the License
403.6	Provisions Pertaining to Permits
403.7	Child Care Services
403.8	Discipline of Children
403.9	Health and Safety
403.10	Education
403.11	Religion
403.12	Recreation and Leisure Time
403.13	Food and Nutrition
403.14	Background Checks
403.15	Professional Services
403.16	Agency Supervision of the Group Home
403.17	Child Care Staff
403.18	Professional Staff
403.19	Support Staff
403.20	Staff Coverage
403.21	Health Requirements for Staff and Volunteers
403.22	Live-in Staff (Repealed)
403.23	Night Duty Staff (Repealed)
403.24	Staff Training
403.25	Physical Facilities
403.26	Required Written Consents
403.27	Records and Reports
403.28	Severability of This Part
403.29	

AUTHORITY: Implementing and authorized by the Child Care Act of 1969 [225 ILCS 10] and the Children's Product Safety Act [430 ILCS 125].

SOURCE: Adopted and codified at 5 Ill. Reg. 13147, effective November 30, 1981; amended at 7 Ill. Reg. 3454, effective April 4, 1983; amended at 11 Ill. Reg. 1489, effective January 15, 1987; amended at 11 Ill. Reg. 17523, effective October 15, 1987; amended at 21 Ill. Reg. 4587, effective April 1, 1997; amended at 24 Ill. Reg. 17568, effective \_\_\_\_\_.

Section 403.10 Health and Safety

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- a) Each child shall be examined by a physician within 30 days before placement in a group home unless the placement is an emergency. In an emergency placement the physical examination shall be scheduled within 5 days after placement and completed within 15 days after placement. In all cases each child shall be screened for communicable diseases within 72 hours.
- b) Each child shall be examined annually or more frequently if findings and medical opinion indicate need. Diagnosed medical problems shall be treated promptly.
- c) Each child shall be given a dental examination at least annually. Diagnosed dental defects shall be treated promptly.
- d) Immunizations and tests, unless exempt on religious grounds, shall be administered as required by the Illinois Department of Public Health regulations or as recommended by a physician.
- e) In case of sickness or accident, immediate medical care shall be secured for the child in accordance with the supervising child welfare agency's directions.
- f) Any child who is ill or suspected of having a contagious disease should be separated from other children until a medical determination has been received that the disease is not contagious or is no longer contagious.
- g) The group home shall keep the supervising child welfare agency informed of any of the child's health problems including the problems of alcoholism and drug abuse.
- h) The group home shall conduct and record fire and evacuation training at least once every three months and consult with local fire authorities regarding fire safety practices.
- i) Household pets shall be inoculated as required by state and local regulations.
- j) No firearms or ammunition shall be allowed in the group home.
- k) The group home may not use or have on the premises, on or after July 1, 2000, any unsafe children's product as described in the Children's Product Safety Act and 89 Ill. Adm. Code 386 (Children's Product Safety).

(Source: Amended at 24 Ill. Reg. 17.000, effective 1/1/00)

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## NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Licensing Standards for Youth Emergency Shelters
- 2) Code Citation: 89 Ill. Adm. Code 410
- 3) Section Numbers: Adopted Action:  
410.190 Amend
- 4) Statutory Authority: The Child Care Act of 1969 [225 ILCS 10/5.2] and the Children's Product Safety Act [430 ILCS 125].
- 5) Effective Date of Amendments: November 1, 2000
- 6) Does this amendment contain an automatic repeal date? No
- 7) Does this amendment contain incorporations by reference? No
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: March 31, 2000, 24 Ill. Reg. 5077
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between proposal and final version: The only changes made are those editing and formatting changes recommended by the Joint Committee on Administrative Rules. Those changes, and only those changes, will be made by the Department in the adopted amendment.
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- 14) Are there any amendments pending on this Part? No
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DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENTS

TITLE 89: SOCIAL SERVICES  
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES  
SUBCHAPTER e: REQUIREMENTS FOR LICENSURE

PART 410  
LICENSING STANDARDS FOR YOUTH EMERGENCY SHELTERS

Section	Purpose
410.10	Purpose
410.20	Definitions
410.30	Effective Date of Standards (Repealed)
410.40	Application for License
410.50	Application for Renewal of License
410.60	Provisions Pertaining to the License
410.70	Provisions Pertaining to Permits
410.80	Supervision of the Emergency Shelter
410.90	Finances
410.100	Homeless Youth Staff
410.110	Professional Staff Requirements
410.120	Support Staff
410.130	Volunteers
410.140	Background Checks
410.150	Health Requirements for Staff and Volunteers
410.160	Staff Training
410.170	Live-in Staff
410.180	Staff Coverage
410.190	Physical Facilities
410.200	Facility Capacity
410.210	Notification and Consent of Parent or Legal Guardian
410.220	Notification of Crisis Intervention Agency
410.230	Reporting to the Child Abuse Hotline
410.240	Admission Criteria
410.250	Shelter Care Services
410.260	Length of Stay
410.270	Discipline and Control of Residents
410.280	Food and Nutrition
410.290	Transportation of Youth
410.300	Case Management Services
410.310	Medical and Health Services
410.320	Education
410.330	Religion
410.340	Required Written Consents for Minors
410.350	Records and Reports
410.360	Records Retention
410.370	Termination of Shelter Care Services
410.380	Severability of This Part

AUTHORITY: Implementing and authorized by the Child Care Act of 1969 [225 ILCS

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

NOTICE OF ADOPTED AMENDMENTS

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## DEPARTMENT OF CHILDREN AND FAMILY SERVICES

## NOTICE OF ADOPTED AMENDMENTS

10] and the Children's Product Safety Act [430 ILCS 125].

SOURCE: Emergency Rules adopted at 14 Ill. Reg. 999, effective January 1, 1990, for a maximum of 150 days; adopted at 14 Ill. Reg. 9407, effective May 31, 1990; amended at 21 Ill. Reg. 4596, effective April 1, 1997; amended at 24 Ill. Reg. 1716, effective 1/1/98.

## Section 410.190 Physical Facilities

- a) Buildings, or parts of buildings, acquired or converted for use as an emergency shelter shall be safe, clean, well-ventilated, properly lighted and heated.
- b) If well water is used, a copy of the inspection report and compliance with local or State health department regulations shall be on file.
- c) Fire prevention and health standards complying with State laws and municipal codes shall be maintained.
- d) The emergency shelter shall have written emergency plans in the event of fire or natural disaster. The plans shall be posted in an area accessible to residents and shall be reviewed with residents upon their first admission.
- e) The youth emergency shelter may not use or have on the premises, on or after July 1, 2000, any unsafe children's product as described in the Children's Product Safety Act and 89 Ill. Adm. Code 386 (Children's Product Safety).
- f) Dangerous household supplies and dangerous tools shall be kept in safe, locked places. Unlawful controlled substances, firearms, ammunition, and other weapons shall not be permitted in an emergency shelter.
- g) There shall be provisions for separating a resident who is suspected of having a contagious disease from other residents pending medical determination.
- h) The emergency shelter shall have an operating telephone on the premises.
- i) Each resident shall be provided with a separate bed except that parents may share a double bed with their child over the age of 2. Each bed shall have a mattress and comfortable bedding. The bedding shall be changed for each new resident assigned to a bed. If a resident will be staying in the shelter for more than seven days, linens shall be changed at least weekly.
- j) Residents shall not share a sleeping area or a sleeping room with residents of the opposite sex except parents may share rooms with their children.
- k) Sleeping areas or sleeping rooms shall be furnished according to the ages and special needs of the residents. There shall be a minimum of 35 square feet of floor space per resident, excluding the closet and wardrobe area.
- l) Basements and attics may be used for sleeping for youth who are

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mobile, physically and mentally capable of self preservation, and able to understand and follow directions with minimal assistance in an emergency.

- 1) To be used for sleeping, basements and attics shall have two exits with one exit leading directly to the outside with means to safely reach the ground level. The second exit may be an easily accessible outside window which provides an unobstructed opening, operable from the inside without the use of tools, and large enough to accommodate an adult. The sleeping area shall be separated from the furnace and utility areas.
- 2) No basement or attic shall be used for sleeping without the written approval of fire, health, and safety officials.
- m) The sleeping areas shall be exposed to an operable outside window or shall have some alternate permanent means of ventilation.
- n) There shall be a bathroom unit including a lavatory and toilet for every ten youth. Bathroom use shall be separate for males and females except for parents with their children.
- o) Shower and laundry facilities for the residents shall be provided in one of two ways:
  - 1) through written agreements approved by the Department with services such as drop-in centers that provide shower and/or laundry facilities for the residents; or
  - 2) through the provision of one shower facility for every 10 residents and laundry services on site at the emergency shelter.
- p) Shower use shall be separate for males and females except for parents and their children.
- q) Kitchen and dining facilities shall be maintained in a clean and sanitary condition in accordance with the requirements of State (Food Service Sanitation; 77 Ill. Adm. Code 750) and local public health authorities.
- r) Space and equipment shall be provided for indoor and outdoor recreation. Recreational resources in nearby communities may be used to fulfill this requirement.
- s) There shall be office facilities and equipment for the conduct of the shelter's professional services and business affairs. The office facilities do not need to be at the same location as the shelter facility but they must be located within reasonable daytime access to the residents.
- t) There shall be space designated in the facility for private interviews or conferences with residents.
- u) Healthy household pets owned by live-in staff which present no danger to residents are permitted on the premises unless prohibited by local health regulations. A licensed veterinarian shall certify that the animals are free of diseases that could endanger the resident's health and that dogs and cats have been inoculated for rabies.
- v) Licensed foster homes sheltering homeless youth shall be regulated by the rules contained in 89 Ill. Adm. Code 4027 (Licensing Standards for Foster Family Homes) and shall provide the case management,

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

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notification and referral services required by this Part either directly or through the administration over the licensed foster home.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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- 1) Heading of the Part: Household Goods Carriers  
2) Code Citation: 92 Ill. Adm. Code 1457

<u>Section Numbers:</u>	<u>Adopted Action</u>
1457.10	new
1457.20	new
1457.30	new
1457.40	new
1457.50	new
1457.60	new
1457.80	new
1457.90	new
1457.100	new
1457.110	new
1457.120	new
1457.130	new
1457.140	new
1457.150	new
1457.160	new
1457.200	new
1457.210	new
1457.220	new
1457.230	new
1457.240	new
1457.300	new
1457.310	new
1457.320	new
1457.330	new
1457.340	new
1457.400	new
1457.405	new
1457.410	new
1457.415	new
1457.420	new
1457.425	new
1457.430	new
1457.435	new
1457.440	new
1457.450	new
1457.455	new
1457.460	new
1457.465	new
1457.470	new
1457.475	new
1457.480	new
1457.485	new
1457.490	new



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1457.495 new  
1457.500 new  
1457.510 new  
1457.520 new  
1457.530 new  
1457.600 new  
1457.610 new  
1457.620 new  
1457.630 new  
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1457.1100 new  
1457.1110 new  
1457.1120 new  
1457.1130 new  
1457.1200 new  
1457.1210 new  
1457.1220 new  
1457.1230 new  
1457.1300 new  
1457.1400 new

4) Statutory Authority: Implementing Sections 18c-1202 and 18c-1207 and authorized by Section 18c-1202 of the Illinois Commercial Transportation Law [625 ILCS 5/18c-1202 and 18c-1207].

5) Effective Date of Rules: November 1, 2000

6) Does this rulemaking contain an automatic repeal date? No

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- 7) Does this rulemaking contain incorporations by reference? Yes
- 8) A copy of the adopted rule, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: 23 Ill. Reg. 13453, November 12, 1999
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences between proposal and final version: No substantive changes were made.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes
- 13) Will this rulemaking replace an emergency rulemaking currently in effect?  
No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Rules: This rulemaking will establish new regulations regarding the entry, exit and services of household goods carriers and will consolidate all existing regulations regarding rates, practices, systems of accounting and reporting, leasing and safety and insurance standards for household goods carriers.
- 16) Information and questions regarding this adopted rulemaking shall be directed to:

Kathy Campbell  
Illinois Commerce Commission  
527 East Capitol Avenue  
P.O. Box 19280  
Springfield, IL 62701 (217)785-4869

The full text of the adopted rules begins on the next page:

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TITLE 92: TRANSPORTATION  
CHAPTER III: ILLINOIS COMMERCE COMMISSION  
SUBCHAPTER a: COMMERCIAL TRANSPORTATION GENERALLY

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1457.20	Notice of Application for Permanent Household Goods Authority
1457.30	Petitions for Leave to Intervene
1457.40	Application for Permanent Household Goods Authority
1457.50	Emergency Temporary Household Goods Authority Application
1457.60	Transfer of Permanent Household Goods Authority

SUBPART B: FITNESS STANDARDS

Section	
1457.80	Requirements to Show Fitness
1457.90	Continued Fitness Standards

SUBPART C: INSURANCE OR BOND COVERAGE

Section	
1457.100	Licenses Conditioned upon Compliance with Insurance Requirements
1457.110	Proof of Insurance or Bond Coverage
1457.120	Public Liability and Property Damage Coverage
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1457.140	Collect On Delivery (C.O.D.) Bond Coverage
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1457.240	Reinstatement

SUBPART E: RESOLUTION OF HOUSEHOLD GOODS DISPUTES

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1457.300	Introduction
1457.310	Definitions

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1457.320	Shipper-Carrier Negotiation
1457.330	Mediation
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1457.410	Documentation of Claims
1457.415	Investigation of Claims
1457.420	Claim Records
1457.425	Acknowledgment of Claims
1457.430	Disposition of Claims
1457.435	Disposition of Unidentified Payments, Overcharges, and Duplicate Payments Not Supported by Claims

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1457.455	Requirements for Form and Content of Claims
1457.460	Documents Not Constituting Claims
1457.465	Claims Filed for Uncertain Amounts
1457.470	Multiple Loss and Damage Claims for the Same Shipment
1457.475	Acknowledgment of Loss or Damage Claims
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1457.485	Investigation of Loss or Damage Claims
1457.490	Disposition of Loss or Damage Claims
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SUBPART H: ACCOUNTING AND FINANCIAL RECORD REQUIREMENTS

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1457.500	Generally Accepted Accounting Principles
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1457.620	Inventory Forms
1457.630	Storage Charges
1457.640	Determination of Weights

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1457.660 Retention of Bills and Other Forms

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Section  
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## SUBPART Q: FEES

Section  
1457.1400 Filing Fees

AUTHORITY: Implementing Sections 18c-1202 and 18c-2107 and authorized by Section 18c-1202 of the Illinois Commercial Transportation Law [625 ILCS 5/18c-1202 and 18c-2107].

SOURCE: Adopted at 24 Ill. Reg. 116.001, effective 1/1/84.

## SUBPART A: APPLICATIONS

## Section 1457.10 Application for Temporary Household Goods Authority

- a) Application for temporary household goods authority shall be filed on forms provided by the Commission.
- b) Public notice of application for temporary household goods authority shall be published in the official State newspaper and the Certificate of Publication must be received by the Commission no more than 30 days after the application has been filed. The published notice must include the docket number assigned to the application by the Commission.
- c) An application for temporary authority cannot be filed unless an application for permanent authority has been filed or is filed concurrently with the application for temporary authority.
- d) The applicant shall have 60 days from the issuance of the order granting a temporary authority to file the following with the Commission:
- 1) Rates applicable to the full extent of the grant of temporary authority;
  - 2) If applicable, proof of insurance as required in compliance with the Workers' Compensation Act [820 ILCS 305];
  - 3) Proof of liability insurance, and any cargo and C.O.D. affidavits or bonds/insurance required; and
  - 4) Payment of franchise fees for each truck to be operated under the



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temporary authority.

- e) Failure to submit the above within the specified 60 day period will result in the order granting the temporary authority being vacated and the application being dismissed.
- f) Temporary authority shall not be granted unless the application and the evidence presented at hearing demonstrate that a public need exists for the requested service and that the applicant is fit, willing, and able to provide the service requested.
- g) Fitness shall be determined in accordance with the provisions of Subpart B of this Part.
- h) In determining whether a public need exists for the requested service the Commission shall consider demographic statistics, supporting shipper testimony, or any other evidence presented that is material and relevant.
- i) An applicant may operate as a household goods carrier under a temporary authority for up to one year after the service date of the order granting temporary authority. During that year of operation, the temporary authority holder shall be subject to:
  - 1) A compliance audit conducted by the Commission;
  - 2) A review of any and all consumer complaints against the temporary authority holder.
- j) If substantial violations of the rules and regulations of the Commission are found in either the compliance audit or the consumer complaint review conducted under subsection (i) of this Section, notice of revocation shall be sent to the temporary authority holder.
  - 1) The temporary authority holder shall have 30 days from the service date of the notice of revocation to submit a written request to the Commission for:
    - A) A six month extension of its temporary authority to allow opportunity to come into compliance with the rules and regulations of the Commission; or
    - B) A formal hearing regarding the allegations of violations.
  - 2) A temporary authority holder shall be allowed only one six-month extension of its temporary operating authority.
    - A) During the six-month extension, the Commission will conduct a compliance audit of the temporary authority holder and a review of consumer complaints against the temporary authority holder.
    - B) The six-month extension shall terminate six months after the date granting the extension.
- k) A temporary authority shall be converted to a permanent authority after one year if the authority holder is found to have operated in compliance with the rules and regulations of the Commission.

**Section 1457.20 Notice of Application for Permanent Household Goods Authority**

- a) When public notice of an application is required by the Illinois Commercial Transportation Law (Law) [625 ILCS 5], notice shall be

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given by publication in the "official newspaper" designated by the Department of Central Management Services. The notice must state the docket number assigned by the Commission and must be on the publication of notice form provided by the Commission.

- b) An applicant shall be directed to republish notice of an application when the original publication failed to give notice to the public of the nature and extent of the proposed operations or when the publication was not in compliance with the Section.
- c) Each applicant shall obtain from the official newspaper a certificate of publication certifying that the notice has been published and showing the contents of the notice and the date of publication. The applicant shall file the certificate with the Commission. A hearing on the application shall not commence until the certificate of publication has been filed.

**Section 1457.30 Petitions for Leave to Intervene**

- a) Petitions for leave to intervene in opposition to applications under the Law must be filed within 15 days after the publication of the notice of application.
- b) The petition must allege facts that show that:
  - 1) The petition is filed within 15 days after the publication of the notice of application.
  - 2) The petitioner has standing to intervene pursuant to Section 18c-2106 of the Law [625 ILCS 5/18c-2106].
- c) A petition to intervene shall be granted when the petition is filed within 15 days after the publication of notice of application and when the petitioner has standing to intervene pursuant to Section 18c-2106 of the Law.

**Section 1457.40 Application For Permanent Household Goods Authority**

- a) Application for permanent household goods authority shall be filed on forms provided by the Commission and must be accompanied by the following:
  - 1) The required fee specified in Subpart Q;
  - 2) The names and addresses of all shippers who intend to support the application;
  - 3) If an Illinois corporation, a copy of the articles of incorporation, or, if a foreign corporation, the certificate of authority to do business in Illinois.
- b) Permanent authority shall not be granted:
  - 1) Unless the applicant has met all of the requirements of Section 1457.10 of this Part; and
  - 2) Until the applicant has operated for one year in substantial compliance with the rules and regulations of the Commission under a temporary authority granted by the Commission under this Part.

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**Section 1457.50 Emergency Temporary Household Goods Authority Application**

- a) Applications for emergency temporary household goods authority shall be filed on forms provided by the Commission and shall be accompanied by:
- 1) The required fee specified in Subpart Q; and
  - 2) Evidence that an urgent and immediate public need exists for the requested service.
- b) Applications received that have not been completed or that are not accompanied by the items specified in subsections (a)(1) and (2) above shall be returned to the applicant.
- c) Applications for emergency temporary authority shall not be granted unless the application demonstrates that there is an urgent and immediate need for the authority requested. An urgent and immediate need shall exist if a natural disaster, or other circumstance, has created a need for transportation service that would not exist in the absence of the disaster or circumstance.

**Section 1457.60 Transfer of Permanent Household Goods Authority**

- a) Application for Transfer of Permanent Household Goods Authority Generally
- 1) Except as otherwise provided in this Part, transfers are hereby provided for to the extent permitted under Section 18c-4306 of the Law.
  - 2) Every transfer application shall be on the Illinois Commerce Commission's (Commission) Transfer Application Form.
  - 3) In all transfers allowed under this Part, whether hearing or non-hearing, the authority transferred shall be converted from a permanent household goods authority to a temporary household goods authority subject to the requirements of Section 1457.10 and Subparts B and C of this Part.
- b) Transfers Involving Immediate Family
- 1) Transfers to members of the transferor's "immediate family" shall be permitted without hearing only where the relationship between transferor and transferee is one of the following:
    - A) Husband-Wife;
    - B) Parent-Child (natural or legally adopted child); or
    - C) Sibling-Sibling.
  - 2) Other uses of the term "immediate family." When used in relation to a transaction other than a transfer to a member of the transferor's immediate family, the term "immediate family" includes the person's spouse, parents, children, and siblings.
- c) Transfers from One Corporation to a Related Corporation
- 1) No transfer shall be approved under Section 18c-4306(g) of the Law if a shareholder of the transferee would acquire a majority or controlling interest unless the same shareholder possessed a majority or controlling interest in the transferor.

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- 2) No transfer shall be approved under Section 18c-4306(d) of the Law unless the transferor corporation is wholly owned by one person or members of one family.
- d) Expedited Household Goods Authority Transfers
- 1) Except as otherwise provided in this Subpart, expedited transfers are hereby provided for to the extent permitted under Section 18c-4306 of the Law.
  - 2) Applications for expedited (non-hearing) transfers shall be granted or denied, based upon the information contained in this Part and without oral hearing.
  - 3) The application shall be set for hearing pursuant to 83 Ill. Adm. Code 200 if the application does not qualify for expedited transfer.
- e) Operations by Fiduciaries Pending Transfer
- 1) Authority of Fiduciary to Continue Operations. The following fiduciaries shall have authority to continue operations under a license or registration issued by the Commission, pending completion of transfer proceedings, in lieu of the person to which the license or registration was issued:
    - A) Administrators and executors of the estates of deceased holders;
    - B) Conservators or guardians of incompetent holders;
    - C) Provisional directors or custodians of corporations appointed by a court pursuant to Section 12.55 of the Business Corporation Act of 1983 [805 ILCS 5/12.55]; and
    - D) Trustees, receivers, conservators, assignees, or other persons authorized by law to collect and preserve the property of financially disabled, bankrupt, deceased, or incapacitated holders.
  - 2) Authority Does Not Extend to Transfer by Fiduciary. Authority under subsection (e)(1) does not extend to transfers from fiduciaries to other persons or to operations by such other persons pending transfer from the fiduciaries.
  - 3) Required Filings by Fiduciary
    - A) Notice. Within 30 days after assuming control, the fiduciary must give notice to the Commission:
      - i) Identifying the person to whom the license or registration was issued by full legal name, trade name, and principal business address;
      - ii) Identifying the license or registration by number;
      - iii) Identifying the fiduciary by full legal name, trade name, and mailing address; and
      - iv) Stating the date on which the fiduciary assumed control.
    - B) Proof of Fiduciary Capacity. If control was assumed pursuant to a court order, a certified copy of the order must be attached. If control was assumed other than by court order, an affidavit of fiduciary capacity must be

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submitted.

C) Transfer Application. The fiduciary shall file an application seeking Commission approval of a transfer of the license or registration, either to the fiduciary or to a transferee designated by the fiduciary. If the fiduciary does not file a transfer application within 180 days after assuming control, the fiduciary must file a report with the Commission, not later than the first day of each succeeding month, explaining the failure to file and must prosecute a transfer application. Such factors as court delays, progress in an estate settlement, and legal action against the estate will be considered as justification for failure to file and process a transfer application.

D) Proof of Insurance. No operations may be conducted until the fiduciary has obtained and filed with the Commission proof of insurance coverage for those operations in compliance with Section 18C-4901 or Section 18C-6503 of the Law.

F) Transfers Not Subject to Commission Approval

1) If a merger, acquisition of control, or other transaction that is authorized pursuant to 49 USC 11343 involves one or more motor carriers of property licensed by the Commission, such transaction shall be recognized by the Commission subject to the provisions of subsection (b) of this Section.

2) No license transferred by operation of 49 USC 11343 shall be effective for any purpose unless and until the person to whom the license is being transferred notifies the Commission of the transfer. Notification shall be accomplished by completing and filing the forms obtained from the Commission for this purpose, along with the required fee set forth in Section 1457.1300 of this Part.

## SUBPART B: FITNESS STANDARDS

## Section 1457.80 Requirements to Show Fitness

The applicant shall present clear and convincing evidence that fitness has been established for the issuance of the requested authority.

a) In determining whether the applicant is fit to operate as a household goods carrier, the Illinois Commerce Commission shall require proof of the following factors:

- 1) The applicant has attended a seminar regarding this Part conducted or approved by the Commission's Compliance Advisory Service;
- 2) The applicant has obtained a 75% or better passing grade on a written test administered by the Commission that tests the applicant's knowledge of this Part related to the requested authority.

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- A) The applicant may not take this test more than once in any seven day period;
- B) An applicant may not have more than one partner or controlling stockholder take this test in any seven day period;

3) The applicant possesses, or can acquire, equipment and facilities of a type required for the transport of household goods as evidenced by a description, submitted with the application, of the equipment to be used by the applicant in the conduct of intrastate transportation (which shall include equipment that is currently owned by the applicant, leased by the applicant, or is to be otherwise acquired by the applicant);

4) The applicant has established a safety, training, and maintenance program, including any policies regarding traffic citations issued against drivers and any refresher/remedial training courses required of drivers;

5) The financial condition of the applicant as represented by the completed financial statement (Supporting Document FIS, consisting of balance sheet and projected income statement) included with the application. Evidence will be required at hearing to corroborate the information provided in the financial statement with the information in the shipper support statements;

6) Required insurance coverage on file with the Commission including, where applicable, insurance in compliance with the Workers' Compensation Act [820 ILCS 305].

b) In determining whether the applicant is fit to operate as a household goods carrier, the Commission shall consider the following:

1) The applicant's safety record as evidenced by a certification or record from the Federal Motor Carrier Safety Administration of the United States Department of Transportation, the Illinois Department of Transportation, or the appropriate regulatory body of another state, setting forth:

- A) Any motor carrier safety citations issued against the applicant during the three years preceding application; and
- B) Whether the file contains any record of any disciplinary action, taken or pending, during the three years preceding application.

2) Any citations or disciplinary actions against the applicant to determine whether a pattern of violations exists and will consider the severity of the violations.

3) The conviction of the applicant of a crime punishable by death or imprisonment in excess of one year under the law under which he/she was convicted, or a crime involving dishonesty or false statement regardless of the punishment. The Commission will consider the type of crime, when the crime occurred, and the age of the applicant at the time of the incident.

4) Whether the applicant is currently, or has been, the subject of civil penalty action by the Commission. In determining whether



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to grant authority to an applicant who is currently, or has been, the subject of prior civil penalty action, the Commission shall consider:

- A) Whether the violations were committed knowingly and willfully;
  - B) Whether the violations caused economic harm to authorized carriers;
  - C) Whether a pattern of violations exists;
  - D) The applicant's cooperation in resolving previous violations; and
  - E) Whether the applicant is delinquent in paying a monetary settlement or civil penalty assessed by the Commission.
- 5) Other facts that may bear on the applicant's fitness to hold the license applied for.
- c) For purposes of subsections (a) and (b) of this Section, "applicant" shall mean proprietors, partners, or, in the case of a corporation, anyone holding a controlling interest in the corporation.

## Section 1457.90 Continued Fitness Standards

## a) Personnel Standards

- 1) No household goods carrier shall permit any driver, helper, and/or packer to be used in the transportation of any household goods shipment or in the performance of accessorial services unless that person is trained in the movement of household goods.
- 2) No household goods carrier shall knowingly permit drivers, helpers and/or packers to go on duty who are under the influence of alcoholic beverages or liquors of any kind, or narcotics, or habit-forming drugs not prescribed by a physician. Nor shall the use of these substances be allowed while the employees are on duty. Knowledge by the carrier is deemed to exist if known to the foreman or other manager of the crew.

## b) Equipment Standards

- 1) Equipment and facilities utilized by a household goods carrier for the transportation of household goods shall be maintained in a manner that is sufficient to protect the goods from damage or breakage. The interior of those vehicles used to transport household goods shipments shall be clean and free from vermin and debris.
- 2) For shipments transported at hourly rates, the household goods carrier shall determine the number of men and the size and the number of motor vehicle equipment that is appropriate to provide safe and timely transportation services for the requested movement. If the carrier deviates from its initial determination as stated in the carrier's written estimate, the shipper shall not be charged for any resulting excess in charges unless the shipper is informed and agrees in writing. A notation shall be

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placed on the bill of lading indicating the number of men and motor vehicles initially estimated and the number actually furnished and used for the move.

## c) Advertising Standards

- 1) For purposes of this Section, the term "advertisement" means any advertisement, solicitation, or other communication with the public in relation to the offer or sale of Illinois intrastate household goods transportation service. The term shall include advertisement by radio, television, internet, computer media or any other medium. The term shall not include a simple listing of household goods carriers' names, addresses, and telephone numbers, as in a telephone directory.
- 2) Each household goods carrier shall include, and shall require each of its agents to include, in every advertisement the full name of the originating household goods carrier as it appears on the carrier's license from the Commission. The advertisement shall also identify the carrier by showing the characters "ILL.C.C." followed by the license number assigned to the household goods carrier by the Commission.
- 3) Household goods carriers who are duly authorized agents for other licensed carriers, including carriers operating under the jurisdiction of the Federal Motor Carrier Safety Administration, may advertise and represent themselves as such an agent.
- 4) The following advertising practices shall not be conducted by household goods carriers:
  - A) Household goods carriers shall not advertise rates unless the following caveats are included in the advertisement:
    - i) "Rates effective (date), subject to change"; and
    - ii) "Actual charges governed by applicable tariffs, this advertisement notwithstanding";
  - B) Household goods carriers shall not misrepresent the scope of services offered and made available to the public under authority of the license issued by the Commission; and
  - C) Household goods carriers shall not advertise that their operations are conducted at addresses or locations where duly authorized employees are not on duty during all business hours. The location of a telephone answering service does not constitute an address or location where duly authorized employees are on duty.
- d) Standards for Forms of Payment
  - 1) Household goods carriers shall accept payment tendered in the following forms:
    - A) Cash;
    - B) Cashier's check; or
    - C) Money order.
  - 2) A household goods carrier may accept payment in other forms, including personal checks and credit cards, if to do so does not result in a practice that circumvents the statutory requirement

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that a carrier charge no more or less than the rate in the applicable tariff.

- 3) A household goods carrier shall not refuse to accept any ordinary form of payment unless, before rendition of the service, the carrier has advised the shipper, in writing, that it would not accept payment in the form tendered.

- e) Notification of any delay in pickup or delivery shall be given to the shipper by telephone, e-mail, fax, or in person, at the carrier's expense, as soon as it becomes apparent that the delay will occur, provided the shipper has given information sufficient for the communication.

- f) All household goods carriers shall hold themselves out to provide a guaranteed delivery service at the tariff charge. The term "guaranteed delivery" shall mean that a carrier providing service shall perform delivery on a specified date.

- g) No household goods carrier shall accept a shipment of household goods for transportation that is subject to the minimum weight, distance, or time provisions of the carrier's tariff without first having advised the shipper of the minimum weight, distance, or time provisions. Failure to advise the shipper, in writing, of the provisions shall void the minimum rate application.

## SUBPART C: INSURANCE OR BOND COVERAGE

**Section 1457.100 Licenses Conditioned upon Compliance with Insurance Requirements**

A license or registration issued by the Illinois Commerce Commission to a household goods carrier has force and effect only while the carrier is in compliance with requirements for the filing of proof of insurance or bond coverage.

**Section 1457.110 Proof of Insurance or Bond Coverage**

- a) The Illinois Commerce Commission incorporates by reference 49 CFR 1023.51 through 1023.65, 1023.71, 1023.72, and 1023.81 as of December 1, 1986, no later amendments or editions included, as its regulations governing the filing of proof of insurance or bond coverage of cancellation, except as otherwise provided in this Part.
- b) The filing of proof of insurance or bond coverage shall constitute acceptance of the minimum terms required by this Part or by statute and shall bind the insurance company.
- c) Coverage shall remain in effect until a cancellation form is filed with the Commission or the coverage is cancelled by the filing of a subsequent form E or H certificate of insurance.
- d) Regulated interstate motor carriers of property that use Illinois as their registration state shall file a copy of public liability and property damage insurance or bond coverage that is filed with the

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Federal Motor Carrier Safety Administration in accordance with the provisions of Section 11506 of the Interstate Commerce Act (49 USC 11506).

- e) For Illinois domiciled carriers, and for Illinois licensed intrastate carriers, regardless of domicile, coverage shall be executed by an admitted insurance company authorized under the laws of the State of Illinois to deliver commercial insurance contracts within the State.

**Section 1457.120 Public Liability and Property Damage Coverage**

The minimum amounts of public liability and property damage insurance coverage required of all household goods carriers shall be the amounts required by 49 CFR 1043.2, November 13, 1990, "Security for the protection of the public: Minimum limits", no later amendments or editions included.

**Section 1457.130 Cargo Damage Coverage**

- a) The minimum amounts of cargo damage coverage required of all motor common carriers of property shall be as required by the provisions of 49 CFR 1043.2(c), November 13, 1990, except as specified in subsection (b) below.

- b) Waiver of Requirement. A household goods carrier may be excused from the requirement of filing proof of cargo insurance if:
  - 1) The carrier has filed with the Commission a completed copy of the Commission's Cargo Insurance Waiver Affidavit form stating that the carrier will not, at any time, carry in any vehicle cargo with a value exceeding \$5,000; and
  - 2) The carrier advises each shipper in writing, prior to rendition of the service, that it does not carry the minimum level of cargo insurance. The burden of proving compliance with this latter requirement shall be on the carrier.

**Section 1457.140 Collect On Delivery (C.O.D.) Bond Coverage**

- a) The minimum amount of C.O.D. insurance or bond coverage required of a household goods carrier for each shipper or consignee for failure of the carrier to remit payment of C.O.D. monies is \$10,000.
- b) Waiver of requirement. A household goods carrier may be excused from the requirement of filing proof of C.O.D. insurance or bond coverage if:
  - 1) The carrier has filed with the Commission a completed copy of the Commission's C.O.D. Bond Waiver Affidavit form stating that the carrier will not, at any time, accept a C.O.D. shipment; and
  - 2) The carrier advises each shipper in writing, prior to rendition of the service, that it does not accept C.O.D. shipments. The burden of proving compliance with this latter requirement shall be on the carrier.

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**Section 1457.150 Shipper Valuation Coverage**

- a) A household goods carrier's liability for loss or damage in the absence of a shipper's release, except as provided in subsection (b) is limited to the greater of:
  - 1) Two dollars per pound per shipment times the weight of the shipment in pounds; or
  - 2) The lump sum value declared in writing by the shipper.
- b) The shipper, by his or her own handwriting, may agree to have a shipment valued for loss or damage purposes at 30 cents per pound per article. To release the shipment at 30 cents per pound per article, the shipper must insert the words 30 cents per pound per article and his or her signature on the bill of lading.

**Section 1457.160 Shipper Insurance Coverage**

- a) Advertisement of Shipper Insurance.
  - 1) Limited risk insurance. A household goods carrier, or its employee, agent, or representative, shall not advertise or represent to the public that insurance is provided against all risks, unless its insurance in fact affords protection to the shipper from every peril to which the shipment shall be exposed. When all except certain risks are insured against, this fact shall be indicated in any advertisement and in any representations to shippers regarding the insurance. Such advertising and representations shall not deceive or mislead the public or any shipper regarding the scope of the exceptions. Policies providing coverage against specific perils only shall be advertised, represented, and designated as "limited-risk" policies or by some other appropriate designation that indicates clearly to the shipper that not all risks are covered.
  - 2) Prerequisites to advertising insurance. No household goods carrier or employee, agent or representative, shall sell, or offer to sell, or procure for any shipper, any kind of insurance covering the loss of or damage to household goods to be transported by the carrier unless the carrier is in full compliance with the requirements of Article XXXI of the Illinois Insurance Code and the rules implementing Article XXXI regarding licensing as a condition precedent to the sale of insurance (50 Ill. Adm. Code 3101 through 3150).
- b) Nothing in this Section shall prohibit a household goods carrier from enrolling its shippers under a master inland marine insurance policy issued to the carrier.
- c) No household goods carrier may charge a shipper for insurance unless the shipper agrees to the insurance, in writing, prior to the move.
- d) Every household goods carrier selling insurance to a shipper must furnish a copy of the insurance policy to the shipper prior to rendition of the service. The insurance policy must include the name,

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address and telephone number of the insurance company and/or the insurance company's agent that the shipper may use in the filing of a claim for loss and damaged goods.

- e) The household goods carrier must keep a copy of the insurance policy as part of its records for the move. An original copy of the insurance policy or certificate is to be filed with the issuing insurance company.

## SUBPART D: SELF-INSURANCE

**Section 1457.200 Effect of Qualification as Self-Insurer**

A carrier that has been authorized by order of the Commission to act as a self-insurer is not required to file proof of insurance or bond coverage under this Part.

**Section 1457.210 Minimum Requirements for Self-Insurers**

The minimum requirements for a carrier to qualify and continue to act as a self-insurer are:

- a) Net worth of:
  - 1) \$500,000, if the carrier operates less than 25 vehicles;
  - 2) \$750,000, if the carrier operates from 25 to 100 vehicles; and
  - 3) \$1,000,000, if the carrier operates more than 100 vehicles.
- b) Property with a value of \$500,000 or more located within the State of Illinois, free from all liens.

**Section 1457.220 Reports to be Filed by Self-Insurers**

Each household goods carrier authorized to be a self-insurer shall file a report with the Commission, not later than the 20th day of each calendar quarter, listing all accidents, injuries, and fatalities arising out of each carrier's operations within the State of Illinois and claims filed against the carrier of the type for which the carrier is a self-insurer, which have occurred or been filed during the reporting period. The quarterly reports shall also state whether the carrier continues to meet the qualifications for self-insurers listed in Section 1457.210.

**Section 1457.230 Revocation of Authorization to be a Self-Insurer**

- a) Whenever, after inspection of reports filed pursuant to Section 1457.220, the Commission finds that a carrier no longer meets the minimum requirements of Section 1457.210 for self-insurance, the Commission shall institute a proceeding pursuant to 83 Ill. Adm. Code 200 to suspend or revoke the carrier's authorization to be a self-insurer.
- b) If a carrier fails to file the reports required by Section 1457.220, the Commission shall institute a proceeding pursuant to 83 Ill. Adm.



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Code 200 to suspend or revoke the carrier's authorization to be a self-insurer.

- c) Based upon the accident information supplied in the reports filed pursuant to Section 1457.220, the Commission may institute a proceeding pursuant to 83 Ill. Adm. Code 200 to suspend or revoke a carrier's authorization to be a self-insurer.

**Section 1457.240 Reinstatement**

A carrier that has had its authorization to be a self-insurer suspended or revoked may petition the Commission pursuant to 83 Ill. Adm. Code 200 for reinstatement of its status as a self-insurer. A carrier shall be reinstated if it has remedied the grounds for the suspension or revocation.

## SUBPART E: RESOLUTION OF HOUSEHOLD GOODS DISPUTES

**Section 1457.300 Introduction**

This Subpart implements the Illinois General Assembly's charge to the Commission in P.A. 89-444 to specify procedures for resolving disputes between household goods carriers and shippers. The provisions of this Subpart are intended to establish a program that provides a fair, fast, and inexpensive means of resolving the disputes that inevitably arise between household goods carriers and their shippers, and they shall be interpreted and applied to that end.

**Section 1457.310 Definitions**

For the purpose of this Subpart:

"Arbitration" means the process by which a dispute, which has been voluntarily submitted by a shipper to the Commission for resolution, is decided.

"Carrier" or "household goods carrier" means a person or entity that engages in the for-hire intrastate transportation of household goods.

"Dispute" means a disagreement between a shipper and a carrier relating to the propriety of charges for the services rendered, or loss of or damage to lading from the loading, unloading, or transportation of the lading.

"Household goods" means the personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling.

"Mediation" means the informal process, voluntarily agreed to by the shipper, by which a carrier and shipper attempt to achieve a mutually

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satisfactory resolution of a dispute with the assistance of a Commission-appointed mediator acting as a neutral, impartial, third party.

"Shipper" means a person who utilizes the services of a carrier for the collect-on-delivery transportation of household goods.

**Section 1457.320 Shipper-Carrier Negotiation**

Prior to involving the dispute resolution procedures established by this Subpart, the shipper and carrier must make a good faith attempt to resolve the underlying dispute. Disputes are subject to the claims provisions of Subparts F and G of this Part. Commission staff will, upon request, provide the parties with information necessary or helpful in negotiating a resolution to the dispute or in following established claim procedures.

**Section 1457.330 Mediation**

If a shipper and carrier are unable to resolve a dispute, either party may request the Commission staff's participation in the dispute resolution process as a mediator.

- a) Carriers are required to participate in mediation in good faith. "Good faith participation" includes participation by a representative of the carrier who has authority to agree to settlement. However, the fact that a settlement is not achieved does not in itself constitute evidence of lack of good faith participation.

- b) Mediation may take any form or employ any process to which the parties and the mediator agree. Mediation will terminate when the parties reach an agreement about all issues in dispute, when the shipper withdraws as a participant, or when the staff mediator determines that there is no reasonable likelihood that the parties will reach an agreement on any issues remaining in dispute.

- c) At the conclusion of mediation, the staff mediator will prepare a memorandum for the parties reflecting the terms of their agreement. If any issues remain unresolved, the staff mediator will give the parties a written opinion as to the merits of the issues remaining in dispute, based on the information available to the staff mediator and the applicable law. The opinion expressed by the staff mediator shall not be binding on the Commission.

**Section 1457.340 Arbitration**

If some or all of the issues in dispute between a shipper and a carrier remain unresolved after mediation, the shipper may request arbitration of the dispute by a Commission arbitrator, appointed by the Commission. Carriers are deemed to join in a request for arbitration submitted by a shipper.

- a) To commence arbitration, a shipper must sign and submit an Agreement to Arbitrate form obtained from the Commission, along with an

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arbitration fee of \$25. When a shipper submits a form, the carrier and shipper agree to abide by the terms of the arbitration award.

- b) The Agreement to Arbitrate will specify that the arbitration award will be based solely on written submissions, documents and exhibits, unless the arbitrator and both parties agree to an oral hearing. The Commission will serve a copy of any submissions from one party on the other party.

- 1) Along with a signed Agreement to Arbitrate, the shipper shall submit 2 copies of a statement setting forth a brief description of the issues in dispute and its positions and arguments on the issues, accompanied by 2 copies of whatever documents, exhibits or other written submissions the shipper believes to be relevant to those issues.

- 2) Within 10 business days after the Commission has mailed the Agreement to Arbitrate and shipper's submissions to the carrier, the carrier may submit 2 copies of a statement and other written submissions responding to the shipper's submissions and setting forth its own positions and arguments about the issues in dispute.

- 3) Within 7 business days after the Commission has mailed the carrier's submissions to the shipper, the shipper may submit 2 copies of a reply to the carrier's submissions.

- c) Within 10 business days after the time for receiving the shipper's reply, the Commission arbitrator shall prepare, sign, and mail to the parties a written award disposing of all issues in dispute. The award shall include a brief statement of the findings of fact made by the arbitrator and the basis for the award.

- d) Unless otherwise provided by this Section, proceedings under this Section shall be governed by the provisions of the Uniform Arbitration Act (710 ILCS 5).

## SUBPART F: CLAIMS FOR OVERCHARGES OR DUPLICATE PAYMENT

## Section 1457.400 Definitions

"Claimant" means any shipper, receiver, or authorized agent filing a request with a carrier for loss of or damage to the household goods shipment, or for the refund of an overcharge or duplicate payment.

"Duplicate payment" means 2 or more payments for transporting the same shipment. Where one or more payments is not in the exact amount of the applicable rates and charges, refunds shall be made on the basis of the excess amount over the applicable rates and charges.

"Overcharge" means charges and payments for transportation services in excess of those applicable under tariffs or schedules lawfully on file with the Commission. It also includes "duplicate payments" as defined in this Section when a dispute exists between parties concerning the

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charges. "Unidentified payment" means a payment that a carrier has received but that the carrier is unable to match with its own open accounts receivable or otherwise identify as being due for the performance of transportation services.

## Section 1457.405 Filing of Claims

- a) A claim shall not be paid unless filed in writing with the household goods carrier that collected the transportation charges. The household goods carrier collecting the payment for the shipment shall be the carrier to process all claims. When a claim is filed with another carrier that participated in the transportation, that carrier shall transmit the claim to the collecting carrier within 15 days after receipt of the claim. If the collecting carrier is unable to dispose of the claim for any reason, the claim may be filed with or transferred to any participating carrier for final disposition.

- b) A single claim may include more than one shipment provided the claim on each shipment involves:

- 1) The same rate publication issue or authority or circumstances;
- 2) Single-line service by the same carrier; or
- 3) Service by the same interline carriers.

## Section 1457.410 Documentation of Claims

- a) Claims shall include the name of the claimant, the claims file number if any (see Section 1457.420), and the amount of the refund sought to be recovered. Claims for overcharge shall be accompanied by the original or a shipper-certified copy of the bills of lading and payment documents, unless the originals were not paper documents. Additional information may include, but is not limited to, the following:

- 1) The rate, classification or commodity description or weight claimed to have been applicable;
  - 2) Complete tariff authority for the rate, classification or commodity description claimed; and
  - 3) Other documents or data the claimant believes substantiate the basis for its claim.
- b) Claims for duplicate payment shall be accompanied by the original or a shipper-certified copy of the bills of lading for which charges were paid and payment documents, unless the originals were not paper documents.
- c) Notwithstanding subsections (a) and (b) of this Section, the failure to provide sufficient information and documentation to allow a carrier to conduct an investigation and pay or decline the claim within the allowable time limitation shall not constitute grounds for disallowance of the claim. Rather, the carrier shall comply with Section 1457.415(c) to obtain the additional information required.

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**Section 1457.415 Investigation of Claims**

- a) Upon receipt of a written claim, the processing carrier shall initiate an investigation and establish a file, as required by Section 1457.420.
- b) If a carrier discovers an overcharge or duplicate payment that has not been the subject of a claim, it shall, within 10 days, initiate an investigation and comply with the provisions of Section 1457.435.
- c) In the event the carrier processing the claim requires information or documentation in addition to that submitted with the claim, the carrier shall, within 10 days, notify the claimant and specify the additional information requested. This includes notifying the claimant that a written claim must be filed before the carrier becomes subject to the time limits for settling a claim under Section 1457.430.

**Section 1457.420 Claim Records**

At the time a claim is received, the carrier shall create a separate file and assign it a consecutive claim file number. The written claim shall be placed in this file. The carrier shall note the claim file number on all documents filed in support of the claim and on all records and correspondence with respect to the claim, including the written acknowledgment of receipt required by Section 1457.425. If pertinent to the disposition of the claim, the carrier shall also note that number on the shipping order and any delivery receipt covering the shipment involved.

**Section 1457.425 Acknowledgment of Claims**

Upon receipt of a written claim, the carrier shall acknowledge its receipt in writing to the claimant within 30 days after the date of receipt. The carrier shall include the date of receipt in its written acknowledgment and shall also enter this date on the face of the written claim.

**Section 1457.430 Disposition of Claims**

- a) Within 60 days after its receipt by the carrier, the processing carrier shall pay, decline to pay, or make a written firm offer to be held open for 30 days to settle, each written claim, except where both the claimant and the carrier agree in writing to extension of time for a definite period.
- b) If the carrier declines to pay a claim or makes a firm offer to settle in an amount different from that sought, the carrier shall give the claimant written notice of its action and reasons for its action, citing tariff authority or other pertinent information developed as a result of its investigation. The carrier shall give notice within the time period specified in subsection (a).

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**Section 1457.435 Disposition of Unidentified Payments, Overcharges, and Duplicate Payments Not Supported by Claims**

- a) If a carrier does not have sufficient information with which to determine whether a payment is owed to the carrier or is in the proper amount, the carrier shall notify the payer of the unidentified payment within 60 days after receipt of the payment and request information that will enable the carrier to make the determination. If the carrier does not receive the information requested within 90 days from the date of notice, the carrier may treat the unidentified payment as a payment in fact of charges owing to it, except that following the 90-day period, the regular claims procedure under this Part shall be applicable.
- b) Notice of unidentified payment, overcharges, and duplicate payments not supported by claims.
  - 1) Notices shall be in writing and clearly indicate that it is a final notice and not a bill.
  - 2) Notice shall include:
    - A) The check number, amount, and date;
    - B) The payer's name; and
    - C) Any additional information the carrier is able to provide, such as copies of any materials, invoices, or letters sent with the unidentified payment.
  - 3) The final notice also must inform the payer that:
    - A) Applicable regulations allow the carrier to conditionally retain the payment as revenue in the absence of a timely response by the payer; and
    - B) Following the 90-day period the regular claims procedure shall be applicable.
- c) Multiple Carrier Claims
  - 1) When a carrier that participated in a transportation movement, but did not collect the transportation charges, finds that an overpayment has been made, that carrier shall, within 10 days, notify the collecting carrier.
  - 2) When the collecting carrier (whether single or joint-line) discovers or is notified by a participating carrier that an overcharge or duplicate payment exists for any transportation charge that has not been the subject of a claim, the carrier shall create a file as if a claim had been submitted and shall record in the file the date it discovered or was notified of the overpayment.
  - 3) The carrier that collected the charges shall then refund the amount of the overpayment to the person who paid the transportation charges or to the person that made duplicate payment within 30 days from the date of the discovery or notification.

SUBPART G: CLAIMS FOR LOSS OR DAMAGE



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**Section 1457.440 Definitions**

"Claimant" means any shipper, receiver, or authorized agent filing a request with a carrier for loss of or damage to the household goods shipment, or for the refund of an overcharge or duplicate payment.

**Section 1457.450 Limitations for Filing a Claim**

- a) Any limitation for the filing of claims for loss or damage to a shipment must allow at least 9 months after the shipment is delivered or scheduled to be delivered for the filing of a claim by the shipper with the carrier.
- b) Any limitations on the filing of suits by the shipper for loss or damage to a shipment must allow at least 2 years from the date of written notice by the carrier that it declined to pay the claim.

**Section 1457.455 Requirements for Form and Content of Claims**

- a) A household goods carrier shall not voluntarily pay a claim for loss, damage, injury, or delay to cargo unless the claimant files a written claim with the carrier within the time limits required by Section 1457.450, the terms of the bill of lading or other contract of carriage, and all applicable tariff provisions.
- b) A written communication filed by a claimant with a carrier will be considered to comply with the provisions for filing claims in the bill of lading or other contract of carriage if it:
  - 1) Contains facts identifying the shipments or property involved;
  - 2) Asserts liability for alleged loss, damage, injury or delay; and
  - 3) Makes claim for the payment of a specified or determinable amount of money.

**Section 1457.460 Documents Not Constituting Claims**

- a) A household goods carrier shall not accept the following items as complying with the minimum claim filing requirements specified in Section 1457.455(b):
  - 1) Appraisal reports of damage or notations of shortage or damage that are entered on freight bills, delivery receipts, or other documents; or
  - 2) Inspection reports issued by a carrier or its inspection agencies.
- b) The items listed in subsection (a) do not by themselves comply with Section 1457.455(b) regardless of whether the extent of loss or damage is indicated as a monetary sum or otherwise.

**Section 1457.465 Claims Filed for Uncertain Amounts**

When a household goods carrier is presented with a claim for an uncertain

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amount, such as "\$100 more or less," the carrier will determine the condition of the shipment involved at the time it made delivery, if the shipment was delivered, and shall ascertain, as nearly as possible, any extent of the loss or damage for which it may be responsible. The carrier shall not, however, voluntarily pay a claim under such circumstances unless and until a written claim for a specified or determinable amount of money has been filed in accordance with the provisions of Section 1457.455(b).

**Section 1457.470 Multiple Loss and Damage Claims for the Same Shipment**

If a household goods carrier investigating a claim discovers that a similar claim on the same shipment has been presented to one or more other carriers or that more than one claimant has filed a claim with respect to the same shipment, the carrier will communicate with each other carrier and, prior to any agreement being entered into as to the proper disposition of the claim or claims, will notify all claimants of the receipt of conflicting or overlapping claims. The carriers will require each claimant to supply further substantiation of its title to the subject property or its right with respect to the claim.

**Section 1457.475 Acknowledgement of Loss or Damage Claims**

Upon receipt of a written claim, a household goods carrier will acknowledge the receipt of the claim in writing to the claimant within 30 days after the date of its receipt by the carrier. The carrier shall include the date of receipt on its written acknowledgment and shall also enter this date on the face of the written claim. The carrier will indicate in its acknowledgment to the claimant any additional documentary evidence required by Section 1457.485(b) or other pertinent information that it may require to process the claim as required by Section 1457.455.

**Section 1457.480 Loss or Damage Claim Records**

- a) At the time a claim is received, the household goods carrier shall create a separate file and assign a consecutive claim file number. The carrier shall note that number on all documents filed in support of the claim and all records and correspondence with respect to the claim, including the written acknowledgement of receipt.
- b) At the time a claim is received, the household goods carrier shall record the date of receipt on the face of the claim document. The date of receipt shall also appear in the carrier's written acknowledgement of receipt to the claimant.
- c) The household goods carrier shall note the claim file number on the bill of lading, shipping order, if in its possession, and any delivery receipt covering the shipment, unless:
  - 1) All information contained in bills of lading, shipping orders, delivery receipts, tally sheets, and all other pertinent records made with respect to the transportation of the shipment on which

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claim is made is available for examination upon receipt of a claim;

- 2) All records and documents (or complete reproductions) are in fact examined in the course of the investigation of the claim and an appropriate record is made that the examination has in fact taken place; and
- 3) This procedure causes the duplicate or otherwise unlawful payment of claims.

**Section 1457.485 Investigation of Loss or Damage Claims**

- a) A household goods carrier shall investigate each claim filed against it in the manner prescribed in this Subpart if the carrier has not already investigated it prior to receipt of the claim.
- b) Supporting documents.

1) Each claim must be supported by the original or a shipper-certified copy of the bill of lading, any evidence of the charges, and the invoice (or an extract of the invoice).

2) The claim must also be supported by certification of prices or values, with any trade or other discounts, allowance, deductions of any nature and the terms thereof, or depreciation reflected in the certification.

3) Before voluntarily paying a claim, the household goods carrier shall require the claimant to provide written certification of the destination value of a shipment where:

- A) The property involved in a claim has not been invoiced to the consignee shown on the bill of lading;
- B) An invoice does not show price or value;
- C) The property involved has not been sold; or
- D) The property has been transferred at bookkeeping values only.

c) When, after investigation, a household goods carrier is unable to authenticate an asserted claim for loss of an entire package or an entire shipment, the carrier shall obtain from the consignee of the shipment involved written certification that the property for which the claim is filed has not been received from any other source.

**Section 1457.490 Disposition of Loss or Damage Claims**

a) When a household goods carrier receives a written claim for loss, damage, injury, or delay to property transported, it shall pay, decline, or make a written firm offer to be held open for 30 days to settle to the claimant within 120 days after receipt of the claim by the carrier, except where the claimant and the carrier agree in writing to an extension of time for a definite period.

b) If the carrier declines to pay a claim or makes a firm offer to settle in an amount different from that sought by the claimant, the carrier shall give the claimant written notice of its action and reasons for

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its action. The carrier shall give written notice within the time specified in subsection (a).

c) If the carrier cannot process and dispose of the claim within 120 days after receipt, the carrier will, at that time and at the expiration of each succeeding 60 day period while the claim remains pending, provide the claimant with written notice of the status of the claim and the reason for the delay in making final disposition. The carrier shall retain a copy of the notice to the claimant in its claim file.

d) If the carrier notifies the claimant that it cannot process and dispose of the claim within 120 days after receipt, the claimant may elect to extend the time as provided in subsection (a) or may treat the notice as notice that the carrier has declined to pay the claim. The claimant will be deemed to have elected to treat the notice as notice that the carrier has declined to pay the claim, unless it notifies the carrier otherwise within 15 days after receipt of the carrier's notice.

**Section 1457.495 Processing of Salvage**

a) Whenever a household goods carrier transports property that is not accepted by the owner, consignee, or other person entitled to receive the property after tender of the property, the carrier shall undertake to sell or dispose of the property. The carrier shall remit the net proceeds of the sale or other disposal of the property to the person entitled to receive the property within 15 days after sale or disposal.

b) The household goods carrier shall give 15 days notice to the owner, consignee, or other person entitled to receive the property of its intent to dispose of the property before selling or otherwise disposing of the property. Unless the owner, consignee, or other person entitled to receive the property notifies the carrier in writing within 15 days that it will accept delivery of the property, the carrier will then be able to sell or otherwise dispose of the property. The carrier may promptly sell perishable goods to prevent deterioration or further deterioration.

c) The household goods carrier shall make an itemized record of the sale or disposal of the property so that it can correlate the property to the shipment involved and any claim filed concerning the property. The carrier shall also assign to each lot of property a consecutive lot number and record that number on its record of the shipment.

d) Upon receipt of a claim on a shipment for which salvage has been processed in compliance with this Section, the carrier will record in its claim file the lot number assigned, the amount of money recovered from the disposition of the property, the name and address of the person to whom the proceeds were paid, and the date of transmittal of the money to the person or persons entitled to receive the money. That information shall be included in the carrier's acknowledgment of the claim.

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- e) Whenever a household goods carrier sells or otherwise disposes of property through or to a person in which the carrier or one or more of its owners, directors, officers, partners, managers, employees, or agents has any interest, the carrier shall indicate the details of the transaction and relationship in its salvage records. The carrier shall not sell or otherwise dispose of property to or through any person owned, controlled, or operated by or in common with the carrier.

## SUBPART H: ACCOUNTING AND FINANCIAL RECORD REQUIREMENTS

**Section 1457.500 Generally Accepted Accounting Principles**

- a) All Illinois Commerce Commission licensed common or contract household goods carriers, and each receiver, trustee, executor, administrator, or assignee of any carrier shall comply with generally accepted accounting principles for use in the keeping and recording of their accounts and bookkeeping records.
- b) As generally accepted accounting principles, the Commission incorporates by reference "Accounting Standards" of the Financial Accounting Standards Board (June 2000, no later amendments or editions included).

**Section 1457.510 Records**

- a) Each carrier shall keep its general accounting books and all other books, records and memoranda that support in any way the entries to those accounting books and analyses of general ledger account balances so that it can furnish at any time full information as to any account. Moreover, it shall support each entry to each account with detailed information as will provide a ready analysis and verification of the facts recorded in those materials. All expenditures must be definitely supported by vouchers, payrolls, receipted bills, canceled checks, receipts for petty cash payments, or other evidence of the expenditures incurred. All revenues must be supported by bills of lading, freight bills or, in the case of income from a lessee, other documentation that evidences the revenue received.
- b) The books referred to in this Subpart include not only books of account in a limited technical sense but all other correspondence, memoranda, including but not limited to computer files, electronic memorandum and computer databases, written estimates, weight tickets, storage inventory sheets and storage contracts, insurance and valuation documentation, loss and damage claim documentation, claim register, etc., that will be useful in developing the history of or facts regarding any transaction.
- c) Every household goods carrier engaged directly or indirectly in any other than a transportation business shall keep separate and distinct records for the transportation operation.

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- d) Each carrier shall keep its books on the basis of an accounting year of 12 months ending on the 31st day of December of each year.
- e) Such books, accounts, records or memoranda shall be preserved for a period of at least 3 years.
- f) Unless otherwise authorized by the Commission in writing, each household goods carrier shall have an office in this State and shall keep in that office all books, accounts, papers, records, and memoranda listed in this Subpart.

**Section 1457.520 Examination and Audit**

Officers and employees of the Commission shall have the authority under the direction of the Commission to inspect, examine, copy and reproduce any and all books, accounts, papers, records and memoranda kept by a motor carrier, authorized personnel or motor carrier agent, with or without prior notice to the authority holder.

**Section 1457.530 Annual Report Filing Requirement**

Each household goods carrier shall complete and file with the Commission, not later than May 15 of each calendar year, an annual report for the preceding calendar year. The report shall be on the Commission's Household Goods Carrier Annual Report Form.

## SUBPART I: BILLS OF LADING OR OTHER FORMS

**Section 1457.600 Bills of Lading and Freight Bills**

- a) Issuance of the bill of lading. At the time a shipment is picked up, all carriers shall issue a bill of lading indicating the commodities transported, the weight or other unit used to compute freight charges, the points of origin and destination, and the names of the consignor and consignee.
- b) Information required on the bill of lading. Whenever a bill of lading is issued in compliance with subsection (a) of this Section, the carrier shall show, in addition to the information specified in subsection (a), the following information:
- 1) The names of the carriers participating in the transportation of the shipment;
  - 2) The name, address, and telephone number of the office of the carrier who should be contacted in relation to the shipment, should there be a need for contact;
  - 3) The name, address, and telephone number of a person to whom notification provided for in Section 1457.90(e) shall be given, except when this cannot be obtained from the shipper;
  - 4) With regard to pickup and delivery the:
    - A) Agreed pickup date;
    - B) Actual pickup date;



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- C) Agreed delivery date or the agreed period of time within which delivery of the shipment is expected at the final destination;
- 5) Where applicable, the estimated amount due to the carrier to obtain possession of a Collect on Delivery (C.O.D.) shipment;
- 6) A statement that, unless the shipper expressly releases the shipment to a value of 30 cents per pound per article, the carrier's maximum liability for loss of or damage to the shipment shall be an amount equal to \$2 for each pound of weight in the shipment or the lump sum value declared by the shipper on this form, whichever is greater.
- c) Issuance of a freight bill. After rendition of the service, all carriers shall issue to the person responsible for payment of freight charges a freight bill indicating the total charge for transportation service.
- d) The bill of lading and the freight bill may be combined in a single document.
- e) Bill of lading contract terms. The contractual provisions governing shipments under this Part shall include, as implied terms, the provisions in the governing tariffs of each carrier.

## Section 1457.610 Estimate of Charges

- a) Estimates of the charges in relation to the transportation of household goods shall be based upon an inspection of the goods or upon a shipper's description of the goods, by telephone or other means, confirmed in writing prior to rendition of the service.
- b) Estimates of the charges in relation to the transportation of household goods shall be on a Commission approved household goods estimate form. The Commission shall approve any form that:
- 1) Is identified at the top of the first page as an "Estimate of Charges";
  - 2) Identifies on the first page the name of the carrier as it appears on its Commission license, the address of the carrier at which employees of the carrier are on duty during business hours, and the telephone number of the carrier;
  - 3) Identifies on the first page the name of the shipper and receiver and the addresses at which the goods are to be picked up and delivered;
  - 4) Specifies the number of pieces of equipment and personnel to be used for the transportation of the shipment;
  - 5) Specifies, for hourly rated shipments, the number of hours, including travel time, estimated for the transportation of the shipment;
  - 6) Specifies, for weight rated shipments, the weight and distance estimated for the transportation of the shipment;
  - 7) Includes the description and estimated charges for any accessory services, including packing, packing materials,

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- valuation, storage, warehouse handling or other charges contained within the carrier's lawfully filed tariffs;
- 8) Specifies the total estimated cost for the transportation of the shipment; and
- 9) Does not contain provisions contrary to this Part.
- c) A signed copy of the estimate shall be delivered to the shipper before rendition of the service, and a copy shall be maintained by the carrier as part of its records.
- d) If the total tariff charges for any shipment exceed the estimated charges plus 10%, the shipper shall become entitled to credit terms from the carrier tendering the shipment for delivery to cover that portion of the total charges that exceeds 110% of the estimated charges. The carrier, in such event, shall advise the shipper that he/she has up to 30 days to pay these additional charges amounting to the balance between the applicable tariff charges and the estimate for the move plus 10%.

## Section 1457.620 Inventory Forms

- a) Definitions. As used in this Section, the term "intercity" means transportation other than "short haul". As used in this Section, the term "short haul" means transportation from the point of origin to the final destination of not more than 35 miles, except that moves wholly within counties having a population of 1,000,000 or more are not considered "short haul".
- b) Each carrier shall, prior to loading at the point of origin, prepare a written inventory of each intercity shipment and of each shipment for which storage-in-transit service is requested.
- c) A properly executed copy of the inventory, signed by both the carrier and the shipper, shall be given to the shipper at the point of origin, prior to loading. Another properly executed copy, signed by the carrier and the shipper, and reflecting any changes in the number, nature, or condition of the lading, shall be given to the shipper at the final destination, subsequent to unloading. A written inventory shall also be prepared for short haul movements at the request of the shipper, provided the shipper agrees to pay the tariff rate for preparation of an inventory. The carrier, however, shall not require the preparation of an inventory at the shipper's expense for short haul movements.
- d) Information required on an inventory. Each inventory required under this Section shall:
- 1) Show the name and current address of the carrier on file with the Commission where its employees can be reached;
  - 2) Show the shipper's name;
  - 3) Show the point of origin and the final destination of the shipment;
  - 4) Include the carrier's description of the goods contained within the shipment and the condition of those goods;

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- 5) Provide a column for the shipper to note exceptions to the inventory as prepared by the carrier;
- 6) Note any goods held by the carrier pending payment of charges; and
- 7) Identify spaces for both the shipper and carrier to sign at the point of origin and the final destination.
- e) The shipper shall be permitted to make notations upon delivery concerning the condition or absence of goods in the shipment, and shall be made aware by the carrier that notations regarding the inventory are permitted upon delivery.
- f) The inventory shall be on a Commission-approved Household Goods Inventory Form. The Commission shall approve a carrier's inventory form if it meets the requirements of this Section and does not contain provisions contrary to the Illinois Commercial Transportation Law or any Commission rules.

## Section 1457.630 Storage Charges

- a) Upon receiving a request for storage service, the carrier shall ascertain whether it is the intent of the shipper to have the shipment stored in excess of 180 days. The storage service shall be treated as permanent storage if the storage is in excess of 180 days or if the time period of intended storage is indefinite. Only storage incidental to transportation shall be deemed storage in transit.
- b) Charges for storage in transit shall be stated in an amount per 100 pounds per day or a fraction thereof.
- c) Storage in transit rates need not be established by a carrier that does not hold itself out to provide or arrange for storage in transit service. Such a carrier, however, must publish in its tariff a statement that it does not hold itself out to provide or arrange for storage services.

## Section 1457.640 Determination of Weights

- a) Each carrier shall determine the tare weight of each vehicle used in the transportation of household goods to be rated on a hundred-weight basis by having it weighed prior to the transportation of each shipment, at a public scale, without the crew on the vehicle. Scales used shall be certified by the Illinois Department of Agriculture. When weighed, the vehicle shall contain all pads, chains, dollies, hand trucks, and other equipment needed in the transportation of the shipment. After the vehicle has been loaded, it shall be weighed, without the crew, at the point of origin of the shipment. The net weight of the shipment shall be obtained by deducting the tare weight from the loaded weight. Where no certified scale is available at the point of origin, the loaded weight shall be obtained at the nearest public scale, either in the direction of the movement of the shipment, or in the direction of the next pickup or delivery in the case of part

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- loads. Gross weight shall be obtained on the same scale as the tare weight with no addition of fuel between weighings.
- b) If no certified scale is available at the point of origin, at any point en route, or at the final destination, a constructive weight based upon 7 pounds per cubic foot of properly loaded van space shall be used. That constructive weight also shall be used for a part load where the circumstances are such that its scale weight could not be obtained at the point of origin, en route, or at the final destination without first unloading it or other part loads being carried in the same vehicle.
- c) Whenever weights are required to be obtained pursuant to this Section, the carrier shall obtain a weight ticket, and this weight ticket shall be maintained by the carrier as part of its record of the shipment. A copy of the weight ticket shall be given to the shipper.

## Section 1457.650 Information Pamphlets for Shippers

Each carrier shall provide to each non-commercial shipper, free of charge, and prior to rendition of service, a copy of the Commission's public information pamphlet for household goods shippers.

## Section 1457.660 Retention of Bills and Other Forms

Bills of lading, written estimates, inventory sheets, storage contracts and warehouse receipts, weight tickets, insurance policies or other forms for each shipment transported under the authority of a license issued by the Illinois Commerce Commission must be kept as part of the records of the carrier for a minimum of 3 years.

## SUBPART J: CAB CARDS AND IDENTIFIERS

## Section 1457.700 Cab Card/Identifier Carrying Requirements

- a) Cab cards/identifiers shall be executed, carried, or presented in satisfaction of the requirements of the Illinois Commercial Transportation Law or this Part no earlier than December 1 preceding the calendar year for which fees were paid, and no later than February 1 of the calendar year for which the fees were paid.
- b) A vehicle operated in both intrastate and interstate commerce must carry both an intrastate and an interstate cab card/identifier.

## Section 1457.710 Exemption of Vehicles from Cab Card Requirements

- a) Intrastate exchange of equipment between licensed carriers. Where a vehicle owned by a licensed intrastate household goods carrier is leased to another licensed intrastate household goods carrier, and the vehicle carries a valid intrastate cab card issued to the carrier that owns the vehicle, the vehicle need not carry a cab card/identifier

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the household goods carrier's application and the payment of the same fee prescribed for the issuance of the original cab card/identifier (see Subpart Q).

**Section 1457.740 Revocation of Exemptions under Section 18c-4601(2) of the Law**

Exemptions granted under Section 18c-4601(2) of the Law shall be revoked only in accordance with procedures and standards applicable to fee adjustments under Section 18c-1501(2) of the Law.

SUBPART K: CARRIER IDENTIFICATION

**Section 1457.800 Carrier Identification of Vehicles and Format**

- a) Except as specified in subsection (b), letters and other characters used to comply with the carrier identification requirements of Section 18c-4701 of the Law must be at least 2 inches high and 1/2 inch wide. The characters must be in a color contrasting with the background color of the vehicle so as to be distinguishable during daylight at a distance of 50 feet while the vehicle is not in motion.
- b) Letters and other characters used to comply with the carrier identification requirements of Section 18c-4701(5) of the Law for vehicles under 9,000 pounds gross vehicle weight must be at least 1/2 inch high and 1/8 inch wide. The characters must be in a color contrasting with the background color of the vehicle so as to be distinguishable during daylight at a distance of 25 feet while the vehicle is not in motion.
- c) It is a violation of this Subpart to display more than one identifier on the power unit of a vehicle. Identifier is defined as the information used to comply with the carrier identification requirements set forth in the Law and this Subpart.
- d) The license number of the carrier, as it appears on the sides of the vehicle in compliance with Section 18c-4701 of the Law, must be preceded by ILL.C.C.

SUBPART L: EQUIPMENT LEASES

**Section 1457.900 Applicability**

- a) This Subpart applies to the following actions by household goods carriers:
  - 1) The leasing of equipment with which to perform transportation regulated by the Commission.
  - 2) The interchange of equipment between motor common carriers in the performance of transportation regulated by this Commission, except with regard to equipment used exclusively to provide transportation within counties having a population in excess of 1,000,000 persons.

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- b) Interstate compensated intercorporate hauling and single-source leasing. Vehicles used in compensated intercorporate hauling or that are leased, with driver, to private carriers for use in interstate commerce are exempt from cab card and identifier requirements under Section 18c-4601 of the Law.
- c) Temporary cards. An intrastate household goods carrier need not hold or carry an Illinois intrastate cab card/identifier if the carrier has been issued and carries a valid, current temporary cab card/identifier. An interstate household goods carrier need not hold or carry a permanent cab card with Illinois interstate identifier if the carrier has been issued and carries a valid, temporary Illinois registration. A temporary card will be issued upon request of the carrier and payment of the fee for the permanent cab card/identifier.

**Section 1457.720 Transfer of Cab Card/Identifier**

- a) If a household goods carrier discontinues the use of a vehicle for which a current interstate cab card/Illinois interstate identifier has been executed and provides a newly-acquired vehicle as a substitute, the carrier can transfer the cab card/identifier by following the procedure in this subsection.
  - 1) The carrier shall execute a new interstate cab card identifying itself and the substitute vehicle and shall enter the appropriate expiration date on the cab card;
  - 2) The carrier shall enter the date on which it terminates use of the discontinued vehicle in the space for the early expiration date on the cab card; and
  - 3) The carrier shall permanently attach the upper left-hand corner of the cab card for the substitute vehicle to the upper left-hand corner of the cab card for the discontinued vehicle so as to permit inspection of the contents of both cards. At this point, the Illinois interstate identifier on the cab card of the discontinued vehicle shall apply to the substitute vehicle.
- b) Unless the carrier transfers a cab card/identifier as provided in subsection (a), it shall destroy the cab card/identifier for a vehicle at the time it discontinues use of the vehicle.
- c) Transfer of an intrastate cab card/identifier is not permitted.

**Section 1457.730 Expiration, Alteration, and Replacement of Cab Card/Identifier**

- a) Each household goods carrier shall destroy a cab card/identifier immediately upon its expiration.
- b) Any erasure, alteration, or unauthorized use of a cab card/identifier shall render the cab card/identifier void.
- c) If a cab card/identifier is lost, destroyed, mutilated or becomes illegible, a new cab card/identifier shall be prepared and issued upon



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- b) This Subpart does not apply to the following actions:
- 1) The leasing of equipment by persons whose principal business is the leasing of equipment, without drivers, for hire, to the general public; and
  - 2) The leasing of equipment for use in interstate commerce.
- c) The leasing of equipment with drivers to other than a licensed household goods carrier is prohibited by Section 18c-4103(1) of the Law.

## Section 1457-910 Definitions

- "Addendum". A supplement to an existing lease.
- "Authorized carrier". A person holding a household goods carrier license from the Commission.
- "Equipment". A motor vehicle, straight truck or tractor.
- "Lease". A written document vesting possession, use, control and responsibility in the lessee during the periods the vehicle is operated by or for the lessee.
- "Lessee". In a lease, the party acquiring the use of equipment, with or without driver, from another.
- "Lessor". In a lease, the party granting the use of equipment, with or without driver, to another.
- "Owner". A person:
- to whom title to equipment has been issued; or
  - who, without title, has the right to exclusive use of equipment for a period longer than 30 days; or
  - who has lawful possession of equipment, registered and licensed in any state in the name of that person.
- "Permanent lease". A lease in which the authorized carrier acquires the use of equipment, with or without driver, from an owner for a period of 30 days or more.
- "Shipper". A person who sends or receives property that is transported in interstate commerce.
- "Sublease". A written document in which the lessee grants the use of leased equipment, with or without driver.

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"Trip lease". A lease in which the authorized carrier acquires the use of equipment, with or without driver, from an owner for a period of time less than 30 days.

## Section 1457-920 General Leasing Requirements

- a) Leasing permitted only in compliance with this Subpart. Authorized carriers may perform regulated transportation in equipment they do not own only in accordance with this Subpart.
- b) Written lease required. Each lease covered by this Subpart must be in writing.
- c) Parties and signatures. A lease subject to this Subpart must be between the owner of the equipment (the lessor) and the licensed carrier to which the equipment, with or without driver, is leased (the lessee). The lease must be signed by each party or its authorized representative.
- d) Filing and review requirements.
  - 1) Filing requirement. The original and 2 copies of each completed (signed and dated) lease to which this Subpart applies must be filed with the Commission's Transportation Division at the following address:

Illinois Commerce Commission  
Transportation Division  
527 East Capitol Avenue  
P.O. Box 19280  
Springfield IL 62701
  - 2) Filing fee requirement. A filing fee as prescribed in Subpart Q shall be remitted with each lease.
  - 3) No operations shall be conducted under a lease to which this Subpart applies until a copy of the completed lease has been filed with or mailed to the Commission's Transportation Division.
  - 4) Operations may be conducted under the lease after filing or transmittal but before completion of review. A copy of the lease and an attached affidavit stating that the lease has been transmitted to the Commission, indicating the date of transmittal and stating that the lease is under review, are to be carried in the vehicle covered by the lease.
- e) Receipts for equipment. Receipts, specifically identifying the equipment to be leased and stating the date and time of day possession is transferred, shall be given as follows:
  - 1) When possession of the equipment is taken by the authorized carrier, it shall give the owner of the equipment a receipt.
  - 2) When possession of the equipment by the authorized carrier ends, it shall give the owner of the equipment a receipt.
- f) Identification of equipment. Authorized carriers shall identify the leased equipment as being in their service as follows:

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- 1) During the period of the lease, the carrier shall identify the equipment by attaching a placard with the identification of the lessee in compliance with Section 18c-4701 of the Law;
- 2) During the entire period of the lease, a copy of the executed lease shall be carried in each motor vehicle covered by the lease. The lease must bear a Transportation Division stamp showing that the lease was approved or that no deficiency was found or have attached to it the affidavit prescribed in subsection (d)(4).
- g) Records of equipment use. Authorized carriers shall keep records of equipment use as follows:
  - 1) General equipment use records. Each authorized carrier shall prepare and keep documents covering each trip for which the equipment is used in the carrier's service. These documents shall contain the name and address of the owner of the equipment, the point of origin, the time and date of departure, and the point of final destination. These documents shall be preserved as part of the carrier's records.
  - 2) Trip lease records. If the equipment is being leased for a period less than 30 days, the authorized carrier shall carry a copy of the lease records described in subsection (g)(1) in the leased equipment while it is operated under the lease. Records carried in the vehicle must also identify the lading.
  - 3) Permanent lease records. If the equipment is being leased for periods of 30 days or more, the authorized carrier may keep the records identifying the lading at its terminals or principal office as part of its records, rather than in the leased equipment.

- h) A copy of the completed written lease shall be retained as part of the carrier/lessee's records.
  - i) Cancellation. In the event that a carrier wishes to cancel a lease prior to the expiration date, it may file a notice of cancellation at the address for filing leases under Section 1457.920(d)(1). Otherwise, the lease shall remain in effect for purposes of the Law until the expiration date, or the date on which the lease expires by operation of Section 1457.940(a)(2), whichever occurs first. No fee is required for filing a notice of cancellation.

## Section 1457.930 Actions Affecting Leases

- a) Revocation of carrier/lessee's license. In the event that the license held by the carrier/lessee is revoked pursuant to Section 18c-1704 of the Law, the lease shall remain in effect but all operations of equipment subject to the lease must cease unless and until the license is reinstated by order of the Commission.
- b) Transfer of carrier/lessee's license. In the event that a transfer as defined in Section 18c-1104 of the Law occurs:
  - 1) The lease shall remain in effect and shall bind the transferee if

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- 2) the name of the license holder is not changed by the transfer; or The lease shall be void from the date the transfer is granted if the name of the license holder is changed by the transfer, unless the transferee files an amendment to the lease showing the change and showing that it has assumed the obligations of the transferor under the lease. No filing fee will be required for the filing of the amendments.
- c) Carrier/lessee's name change. In the event that the carrier/lessee undergoes a name change not associated with a transfer as defined in Section 18c-1104 of the Law, the lease shall be void from the date of the name change unless the carrier/lessee files an amendment to the lease showing the changes and stating that the change is not associated with a transfer. No filing fee will be required for the filing of the amendments.

## Section 1457.940 Lease Terms and Conditions

- a) Required terms and information. A lease subject to this Subpart must specify the information set forth in this subsection.
  - 1) Identifying information
    - A) Parties. The lease must show the full legal name of the carrier/lessee, as it appears on the carrier's Commission license; the full legal name of the equipment owner/lessor; and the mailing address of each, including street address, city, state, and zip code.
    - B) Vehicle. The lease must show the type, make, year, and vehicle identification number of the motor vehicle that is subject to the lease.
  - 2) Term of the lease. The lease must specify the dates or the circumstances that begin and end the term of the lease. The term of the lease shall coincide with the times for giving receipts for the equipment as required in subsection (b). The term of the lease shall not exceed 3 years.
  - 3) Compensation to owner and drivers. The lease must specify both the amount and the method of computing the compensation to be paid by the carrier/lessee to the equipment owner. Compensation may be stated either jointly or separately for equipment and drivers. The lease must also specify any documents that must be presented by the lessor before he/she can receive payment.
  - 4) Responsibility for expenses. The lease must specify the responsibility of the lessee and the lessor for payment of expenses incurred in providing transportation service, either directly or through deductions (chargebacks) from compensation specified in subsection (b)(3). Expenses not expressly made the responsibility of the lessor shall be the responsibility of the lessee. The lease must also specify any documents to be submitted by either party in relation to payment or reimbursement of expenses. Expenses covered under this subsection (a)(4)

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include:

- A) Fuel costs;
- B) Fuel and other taxes;
- C) Empty mileage;
- D) Licenses, permits, plates, and decals of all types except permits issued by the Commission;
- E) Tolls and other fees, except those fees paid to the Commission;
- F) Insurance and surety coverage (including responsibility for primary insurance);
- G) Rentals or other payments to the carrier; and
- H) Any other expenses related to the transportation.

I) Supplemental insurance coverage. The lease must specify which party is responsible for securing and paying for, either directly or indirectly, any other insurance or surety coverage in addition to amounts required by the law or Subpart C of this Part. If the lessor purchases any insurance from or through the lessee, the lessee shall provide the lessor, on request, a copy of the policy and a certificate of insurance showing the name of the insurance company, the policy number, amounts and types of coverage, effective dates of coverage, deductible amounts, and the cost of the coverage.

6) Loss or damages. The lease must specify the conditions under which the lessor may be required to indemnify the lessee for personal injury, property damage, or loss of or damage to cargo. If indemnification is made through deductions from compensation otherwise owed to the lessor, a written itemization and explanation of deductions must be provided to the lessor before any deductions are made.

b) Implied terms. The following terms, if not stated in a lease, shall be implied. Any contrary provisions in the lease shall be void.

- 1) Exclusive possession and control. The lessee shall have exclusive possession and control of leased equipment during all periods when the equipment is operated under the lease. Such exclusive possession and control shall extend also to the drivers of leased equipment.
- 2) Insurance coverage. The lessee shall have the responsibility for securing insurance or surety coverage in compliance with the Law and Subpart C of this Part.
- 3) Payment deadline. Payment of compensation due under a lease must be made within 15 days after submission of any documents specified under subsection (a)(3).
- 4) Pre-conditions to lease. The lessor is not required to purchase, rent, or lease any goods (including equipment) or services from the lessee as a condition of the lease or of entering into or not canceling the lease.
- 5) Other obligations of lessee.

A) Copy of lease. Prior to commencement of operations under a

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lease, the lessee shall provide the lessor a completed copy of the lease and proof of its transmittal to the Commission.

B) Copy of rated freight bill. If compensation is based on information shown on the bill, the lessee shall provide the lessor with a copy of the rated freight bill at the time compensation for the movement is paid to the lessor. The lessee may delete the names of shippers, consignors, and consignees from the bill.

C) Examination of tariff. If the lessor requests, the lessee shall allow an examination of its tariffs.

6) Any term of a lease that conflicts with the Illinois Commercial Transportation Law or Commission rules is void.

**Section 1457.950 Lease Form**

All leases covered by this Subpart shall include the Commission's Equipment Lease form.

**Section 1457.960 Possession and Control of Leased Equipment**

a) General requirement. The lessee of equipment used under authority of a license issued by the Commission shall have exclusive possession and control of the equipment while it is so used. Failure to exercise supervision and control of the equipment constitutes an illegal transfer of authority as set forth in Section 18C-4307 of the Law, making both the lessor and lessee subject to sanctions provided by Section 18C-1704 of the Law.

b) Exceptions. The requirement of exclusive possession and control does not apply to a lessee that, in turn, subleases the equipment to another carrier, since the latter carrier has the obligation to supervise and control the equipment. The requirement does, however, apply to the sublessee.

**Section 1457.970 Additional Requirements for Trip Leases between Authorized Carriers**

Authorized carriers are permitted to trip lease equipment to or from other authorized carriers only if:

- a) The lessor owns the equipment or has possession and control of the equipment under a lease of 30 days or more;
- b) The lessee exercises exclusive supervision and control of the equipment while it is operated under lessee's license; and
- c) All other requirements of this Subpart are complied with.

SUBPART M: RATES BASED ON VALUE (RELEASED VALUE RATES); LINE-HAUL RATES; AND ACCESSORIAL OR TERMINAL CHARGES

**Section 1457.1000 Authority to Establish Released Value Rates**



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- a) Prior authority from the Commission is required to establish released value rates.
- b) Standards for granting or denying released value rate applications. The Commission shall grant an application for authority to establish rates based on value if the rate is agreed to by the shipper, based on value declared by the shipper in writing, and is in compliance with 92 Ill. Adm. Code 1225, except that the rate is based on value.
- c) Additional authority not required to change rate levels. Carriers authorized to establish rates based on value may change the level of the rates without additional authority, provided that the commodities to which the rates apply, the territory within which the rates apply, and other provisions regarding application of the rates are not changed.
- d) Limitation. A released value rate authorized by the Commission applies to the specific shippers for which it was authorized.

**Section 1457.1010 Released Rate Application Form**

Applications for authority to establish rates based on value shall be on the Commission's "Released Rate Application" form. Forms are available from the Commission at its offices in Springfield and Chicago.

**Section 1457.1020 Establishment of Line-haul Rates**

- a) All carriers under the Commission's rate jurisdiction are required to establish rates in cents per 100 pounds, except as provided in subsections (b) and (c) of this Section.
- b) Rates may be established per unit of time:
  - 1) When the distance from the point of origin to the final destination of a shipment is not more than 35 miles; or
  - 2) When both the point of origin and the final destination of a shipment are within a county having a population of 1,000,000 or more; or
  - 3) When the transportation is exempt from Commission rate jurisdiction. Transportation is rate-exempt when both the point of origin and the final destination of a shipment are within the terminal area of a municipality, unless both the origin and destination are within a county having a population of 1,000,000 or more.
- c) Shipments rated upon units of time shall, except as otherwise provided in this subsection, be transported singly and not commingled with any other freight. Where shipments rated upon units of time are commingled, the burden shall be on the carrier to demonstrate that the charges for each commingled shipment are not greater than the charges that would have applied if the shipments had been transported singly and not commingled.

**Section 1457.1030 Accessorial or Terminal Service Charges**

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- a) Definitions. As used in this Section, the term "intercity" means transportation other than "short haul". As used in this Section, the term "short haul" means transportation from the point of origin to the final destination of not more than 35 miles, except that moves wholly within counties having a population of 1,000,000 or more are not considered "short haul".
- b) Each household goods carrier shall establish charges for each accessorial or terminal service rendered in connection with line-haul transportation. The tariffs containing such charges shall separately describe each service and the charge therefor. Charges for packing and unpacking service shall be on a physical unit basis. Charges for miscellaneous labor performed at the request of the shipper shall be on an hourly basis.
- c) Whenever the shipper specifically requests notification of the actual weight and charges on an intercity shipment, the carrier shall comply with the request immediately upon determining the actual weight and charges, by telephone, fax, or e-mail if requested. The notification shall be made no later than 24 hours prior to the time the shipment is offered by the carrier to the shipper for delivery at the final destination, except where the shipment is in transit less than 24 hours.

SUBPART N: APPLICATIONS FOR APPROVAL OF TARIFF BUREAU AGREEMENTS

**Section 1457.1100 Definition of Tariff Bureau**

The term "tariff bureau", when used in Subpart N and Subpart O, shall mean any conference, association, committee, or other organization that engages in collective ratemaking activities.

**Section 1457.1110 Contents of Application**

Application for approval of a tariff bureau agreement shall be verified and shall show:

- a) The full and correct name, trade name, and business address (street and number, city, state, and zip code) of the applicant; whether applicant is a corporation, individual, or partnership; if a corporation, the state of incorporation, and if a partnership, the names of the partners and date of formation of the partnership.
- b) The full and correct name and trade name of each carrier participating in the agreement.
- c) A detailed description of the tariff bureau, including its organizational structure; the identities of its owners, officers and directors; the services it provides; the territory within which it provides services; and any relationship of a business nature between the tariff bureau and any other transportation organization other than its participating carriers.
- d) The facts relied upon to establish that the agreement will be in the

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furtherance of the State transportation policy (see 625 ILCS 5/18c-1103).

**Section 1457.1120 Required Exhibits**

There shall be filed with each application the following exhibits:

- a) A copy of the collective ratemaking agreement.
- b) A copy of the constitution, bylaws, or other documents or writings, specifying the organization's powers, duties, and procedures, unless incorporated in the tariff bureau agreement itself.

**Section 1457.1130 Independent Action**

When independent action is announced by a carrier participating in a tariff bureau agreement, and the carrier requests that the tariff bureau publish the rates, the tariff bureau shall give notice of and publish the rates in the same manner that the tariff bureau gives notice of and publishes actions proposed under procedures for collective ratemaking. No joint or collective procedures under the agreement are thereby invoked.

**SUBPART O: TARIFF BUREAU RECORDS AND REPORTS****Section 1457.1200 Accounts**

Accounts shall be kept by each tariff bureau of all receipts and expenditures of moneys. All receipts and expenditures of moneys shall be supported by original records or copies of original records.

**Section 1457.1210 Ratemaking Records**

Each tariff bureau shall maintain, with regard to each rate proposal presented to or acted upon by the tariff bureau, either as an independent action or collective action, a complete file containing:

- a) A copy of the rate proposal as received by the tariff bureau;
- b) A copy of any response by the tariff bureau, participating carriers, or others to the rate proposal;
- c) An account of the processing and disposition of the rate proposal; and
- d) Any related documents in the possession of the tariff bureau.

**Section 1457.1220 Reporting Requirements**

Each tariff bureau shall complete and file with the Commission by May 15 of each year the Commission's Tariff Bureau Annual Report form.

**Section 1457.1230 Prohibition Against Protests by Tariff Bureaus**

- a) The Commission shall not approve any tariff bureau agreement unless the agreement provides that the tariff bureau shall not, in its own

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name, intervene in opposition to any action by a participating or non-participating carrier.

- b) A tariff bureau may act as the agent for a carrier in filing or prosecuting a petition for leave to intervene in opposition to the action of a carrier, provided that the tariff bureau does not engage in the unauthorized practice of law.
- c) A tariff bureau may defend a general rate change published by the bureau in an agency publication.

**SUBPART P: CARRIER/AGENT RELATIONSHIPS****Section 1457.1300 Carrier/Agent Relationships**

- a) Household goods carriers are absolutely responsible for all the acts or omissions of their agents that relate to the performance of the Illinois intrastate transportation held out in the name of the principal carrier, or where the shipper is led to believe the transportation would be performed by the principal carrier.

- b) No household goods carrier shall act for any other carrier in the solicitation or transportation of shipments of household goods in Illinois intrastate commerce between points that both carriers are authorized to serve unless the rates established by the 2 carriers are identical.

- c) Authority for Agents' Operations:

- 1) When an agent of a carrier moves a shipment under its own operating authority, the estimate of charges, bill of lading, and other related documents shall be prepared and issued by the agent in its own name rather than in the name of the principal.

- 2) When an agent of a household goods carrier moves a shipment under its principal's operating authority, the estimate of charges, bill of lading, and other related documents shall all be prepared and issued in the name of the principal rather than in the name of the agent. In this situation, the agent shall act in all respects as if it were the principal.

- 3) To the extent that an agent operates beyond the scope of its certificate or license, by using the principal's operating authority, it shall do so pursuant to an equipment lease (see Subpart L of this Part) or a license transfer approved by the Commission. In this instance, the estimate of charges, bill of lading, and other related documents shall all be prepared and issued by the agent in the name of the principal rather than in its own name.

- 4) Before operations are conducted by an agent on behalf of its principal, a copy of the agency agreement, duly executed by the parties, shall be filed with the Commission.

**SUBPART Q: FEES**

## ILLINOIS COMMERCE COMMISSION

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## Section 1457.1400 Filing Fees

Filing fees for household goods carriers shall be as follows:

- a) Application for new license
  - 1) Application for temporary authority \$300
  - 2) Application for emergency temporary authority \$300
  - 3) Application for permanent license \$600
- b) Application for extended license
  - 1) For temporary authority \$300
  - 2) For emergency temporary authority \$300
  - 3) Other application for extended license \$600
- c) Application to transfer license
  - 1) Transfer under Section 18c-4306 of the Law \$300
  - 2) Other application to transfer license \$600
- d) Application to reinstate a suspended or revoked license or vacated order
  - e) Petition for interpretation of authority \$600
  - f) Petition to amend authority \$250
  - g) Petition for name change \$75
  - h) Rate filings \$75
  - 1) Application for authority to establish a released value rate \$75
  - 2) Special permission application \$75
- i) Annual cab card and cab card renewal fee for each vehicle operated by or under authority of a household goods carrier \$25
- j) Each order for cab cards shall be accompanied by a \$10 order processing fee.

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Administration
- 2) Code Citation: 59 Ill. Adm. Code 101
- 3) Section Numbers: 101.110  
Adopted Action: Repealed
- 4) Statutory Authority: Implementing Sections 7 and 8 of the Illinois Grant Funds Recovery Act [30 ILCS 705/7 and 8] and Section 10-10 of the Illinois Administrative Procedure Act [5 ILCS 100/10-10].
- 5) Effective Date of Amendments: November 3, 2000
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this amendment contain incorporations by reference? No
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: June 30, 2000, 24 Ill. Reg. 8713
- 10) Has JCAR issued a Statement of Objection to this amendment? No
- 11) Differences between proposal and final version: None
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes
- 13) Will this rulemaking replace an emergency rulemaking currently in effect?  
No
- 14) Are there any amendments pending on this Part: No
- 15) Summary and Purpose of Rulemaking: This rulemaking provides a uniform set of rules in the area of Grant and Grant Fund Recovery for DHS's service providers. There are approximately 2000 community agencies under contract to deliver services to DHS clients. Since the inception of the Department these agencies have been subject to a variety of administrative rule requirements regarding grant fund recovery. This rulemaking, along with the amendment or repeal of current DHS rules, will provide these rules.
- 16) Information and questions regarding this adopted rulemaking shall be directed to:



DEPARTMENT OF HUMAN SERVICES  
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Ms. Susan Weir, Bureau Chief  
Bureau of Administrative Rules and Procedures  
Department of Human Services  
100 South Grand Avenue East  
3rd Floor, Harris Bldg.  
Springfield, Illinois 62762  
(217) 785-9772

The full text of adopted amendment begins on the next page:

DEPARTMENT OF HUMAN SERVICES  
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TITLE 59: MENTAL HEALTH  
CHAPTER I: DEPARTMENT OF HUMAN SERVICES  
PART 101  
ADMINISTRATION

- Section  
101.10 Illinois Department of Mental Health and Developmental Disabilities -- Internal Organization (Repealed)  
101.20 Service recipients activity fund in State-operated Mental Health and Developmental Centers  
101.30 Payments to the account of service recipients  
101.60 Service contracts (Recodified)  
101.70 Conduct of hearings and appeals (Repealed)  
101.75 Conduct of hearings and appeals for Bogard et al. v. Bradley et al. consent decree (88 C 2414, U.S.D.C., N.D. IL (June 2, 1993)) class members  
101.80 Conflict of interest  
101.90 Specialized living centers  
101.100 Community mental health and developmental disabilities service provider participation fee trust fund  
101.110 Hearings and appeals under Sections 7 and 8 of the Illinois Grant Funds Recovery Act [30 ILCS 705/7 and 8] (Repealed)

APPENDIX A Organization Charts (Repealed)

- ILLUSTRATION A Illinois Department of Mental Health and Developmental Disabilities (Repealed)  
ILLUSTRATION B Associate Director (Repealed)  
ILLUSTRATION C Division of Developmental Disabilities (Repealed)  
ILLUSTRATION D Division of Alcoholism (Repealed)  
ILLUSTRATION E Division of Management Services (Repealed)  
ILLUSTRATION F Division of Community Services and Interagency Affairs (Repealed)  
ILLUSTRATION G Region 1A Office (Repealed)  
ILLUSTRATION H Region 1B Office (Repealed)  
ILLUSTRATION I Region 2 Office (Repealed)  
ILLUSTRATION J Region 2 Developmental Disabilities (Repealed)  
ILLUSTRATION K Region 3A Office (Repealed)  
ILLUSTRATION L Region 3B Office (Repealed)  
ILLUSTRATION M Region 4 Office (Repealed)  
ILLUSTRATION N Region 5 Office (Repealed)

AUTHORITY: Implementing Section 2-105 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/2-105], Sections 6, 18.1, 20 and 22 of the Mental Health and Developmental Disabilities Administrative Act [20 ILCS 1705/6, 18.1, 20 and 22], Section 3.06 of the Specialized Living Centers Act [405 ILCS 25/3.06], Section 4A-101 of the Illinois Governmental Ethics Act [5 ILCS 420/4A-101], Sections 7 and 8 of the Illinois Grant Funds Recovery Act [30 ILCS

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705/7 and 8] and Bogard et al. v. Bradley et al. consent decree (88 C 2414, U.S.D.C., N.D. IL (June 2, 1993)) and Section 10-5 of the Illinois Administrative Procedure Act [5 ILCS 100/10-5] and authorized by Section 5-104 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/5-104] and Section 5 of the Mental Health and Developmental Disabilities Administrative Act [20 ILCS 1705/5] and Section 10-10 of the Illinois Administrative Procedure Act [5 ILCS 100/10-10].

SOURCE: Effective February 1, 1977, corrected April 1, 1977; amended at 3 Ill. Reg. 50, P. 277, effective December 3, 1979; amended at 4 Ill. Reg. 17, p. 205, effective April 15, 1980; codified at 5 Ill. Reg. 10716; amended at 8 Ill. Reg. 12265, effective July 1, 1984. Section 101.60 recodified to 44 Ill. Adm. Code 1250 at 8 Ill. Reg. 18490; amended at 15 Ill. Reg. 9316, effective June 18, 1991; emergency amendment at 15 Ill. Reg. 14663, effective October 1, 1991, for a maximum of 150 days; amended at 16 Ill. Reg. 2137, effective January 24, 1992; amended at 18 Ill. Reg. 4179, effective March 3, 1994; amended at 20 Ill. Reg. 7856, effective June 7, 1996; amended at 20 Ill. Reg. 13599, effective October 10, 1996; transferred from the Department of Mental Health and Developmental Disabilities to the Department of Human Services by P.A. 89-507; emergency amendment at 23 Ill. Reg. 5138, effective April 2, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 11118, effective August 24, 1999; emergency amendment at 24 Ill. Reg. 9205, effective June 14, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 11130, effective

Section 101.110 Hearings and appeals under Sections 7 and 8 of the Illinois Grant Funds Recovery Act [30 ILCS 705/7 and 8] (Repealed)

The Department shall recover grant funds in accordance with the Illinois Grant Funds Recovery Act [30 ILCS 705] if it believes the funds have been misspent or improperly held. If the grantee agency disagrees with the Department's decision to recover funds, it may appeal the decision, and the Department shall conduct a hearing in accordance with this Section:

- a) Criteria for recovery  
Grant funds shall be subject to recovery if the Department finds that the grant funds:
  - 1) Received by the agency are in excess of actual reimbursable expenses by program;
  - 2) Were transferred between programs, unless permission was requested of the Department in writing and was approved;
  - 3) Were not spent for the purposes specified in the grant agreement; or
  - 4) Were not expended or expended by the expiration date of the grant.
- b) Informal hearing  
If the Department believes that grant funds received by a grantee agency are subject to recovery under the Illinois Grant Funds Recovery Act, it shall notify the agency's chief executive officer of that fact

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in writing via certified mail. The letter of notification shall contain:

- 1) The amount the Department believes is subject to recovery;
- 2) An offer to have an informal hearing with Department staff to resolve issues before issuing a notice of intent pursuant to subsection (c) of this Section; and
- 3) A statement that any agency wishing to have an informal hearing must request an informal hearing in writing within 15 calendar days after receipt of the Department's letter of notification. The Department shall schedule the hearing within 60 days after the receipt of the agency's request. The agency shall send its letter of request to:

Offices of Mental Health and Developmental Disabilities  
180 North 9th Street  
Springfield, IL 62765  
Attn: Grant Funds Recovery Act Appeals

- c) Notice of intent to recover  
If the informal hearing does not resolve the matter or if the agency does not request a hearing within the time specified in subsection (b) of this Section, the Department shall send a notice of intent to recover to the agency's chief executive officer via certified mail. Such notice shall include the amount to be recovered, the facts permitting recovery, a statement of right to appeal, the Department's findings, a description of the appeal procedure and a statement that if the agency does not appeal or respond to the letter, the Department shall take action to recover the amount specified.  
Request for an appeal  
An agency wishing to appeal may do so by sending a letter to the Department requesting an appeal. The letter shall be sent within 35 calendar days after receipt of the notice of intent to recover sent to the Department at the address in subsection (b)(3) of this Section. The appeal shall follow the procedures of 89 Ill. Adm. Code 508.  
Stay of proceedings  
The request for a hearing shall stay any further action by the Department to recover the funds until the resolution of the appeal. The Department shall have the burden of proving by substantial evidence that the funds were subject to recovery as defined in subsection (a) of this Section. On conclusion of the Department's presentation, the agency may present written and oral evidence. Standard of review  
In all appeals, the administrative law judge shall determine whether there was substantial evidence supporting the Department's findings that the funds were subject to recovery.  
Final administrative decision and recovery order  
1) If the Secretary or his or her designee holds that the funds were

## DEPARTMENT OF HUMAN SERVICES

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~~subject--to--recovery--the-Secretary-shall-issue-a-recovery-order  
for-the-funds-~~

- 2) ~~The decision shall constitute a final administrative decision--in  
accordance--with--Section--3-101-of-the-Administrative-Review-law  
{335-tbES-579-101}~~

(Source: Repealed at 24 Ill. Reg.                     , effective  
                    )

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Determination of Need (DON) and Resulting Service Cost Maximums (SCMs)
- 2) Code Citation: 89 Ill. Adm. Code 679
- 3) Section Numbers: Adopted Action:  
679.50 Amended
- 4) Statutory Authority: Implementing Section 3 of the Disabled Persons Rehabilitation Act [20 ILCS 2405/3].
- 5) Effective Date of Amendment: November 3, 2000
- 6) Does this amendment contain an automatic repeal date? No
- 7) Does this amendment contain incorporations by reference? No
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal Published in Illinois Register:

July 7, 2000 , 24 Ill. Reg. 9321

10) Has JCAR Issued a Statement of Objection to this amendment? No

11) Differences between proposal and final version: None

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will this amendment replace an emergency amendment currently in effect?  
Yes

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Amendment: This rulemaking amends the Service Costs Maximums to allow for the 16.7% increase in personal attendant rates that was recently enacted by the legislature and approved by the Governor.

16) Information and questions regarding this adopted rulemaking shall be directed to:

Ms. Susan Weir, Bureau Chief  
Bureau of Administrative Rules and Procedures  
Department of Human Services  
100 South Grand Avenue East (217) 785-9772  
3rd Floor, Harris Bldg.  
Springfield, Illinois 62762



## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED AMENDMENTS

The full text of adopted amendments begins on the next page:

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED AMENDMENTS

## TITLE 89: SOCIAL SERVICES

## CHAPTER IV: DEPARTMENT OF HUMAN SERVICES

## SUBCHAPTER d: HOME SERVICES PROGRAM

## PART 679

## DETERMINATION OF NEED (DON) AND RESULTING SERVICE COST MAXIMUMS (SCMs)

## Section

679.10 General Provisions

679.20 Composition of the DON

679.30 Scoring of the DON Except for Respite Cases

679.40 Scoring the DON for Respite Cases

679.50 Service Cost Maximums (SCMs)

AUTHORITY: Implementing Section 3 of the Disabled Persons Rehabilitation Act [20 ILCS 2405/3].

SOURCE: Adopted at 19 Ill. Reg. 5062, effective March 21, 1995; amended at 20 Ill. Reg. 6303, effective April 18, 1996; amended at 21 Ill. Reg. 2674, effective February 7, 1997; recodified from the Department of Rehabilitation Services to the Department of Human Services at 21 Ill. Reg. 9325; emergency amendment at 22 Ill. Reg. 2328, effective January 12, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 10445, effective May 29, 1998; emergency amendment at 22 Ill. Reg. 16031, effective August 14, 1998, for a maximum of 150 days; emergency expired on January 11, 1999; amended at 23 Ill. Reg. 1615, effective January 20, 1999; amended at 23 Ill. Reg. 7492, effective June 17, 1999; emergency amendment at 23 Ill. Reg. 10526, effective August 10, 1999, for a maximum of 150 days; amended at 24 Ill. Reg. 285, effective December 23, 1999; amended at 24 Ill. Reg. 6563, effective May 1, 2000; emergency amendment at 24 Ill. Reg. 9966, effective July 1, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 11376, effective \_\_\_\_\_.

## Section 679.50 Service Cost Maximums (SCMs)

- a) For each individual meeting the minimum required DON scores for eligibility (see 89 Ill. Adm. Code 682), there is a corresponding Service Cost Maximum (SCM) for his/her DON score which is the maximum amount that may be expended for services through HSP for an individual who chooses HSP services over institutionalization. This amount directly corresponds to the amount the State would expect to pay for the nursing care component of institutionalization if the individual chose institutionalization.
- b) The SCMs for individuals served under the HSP Medicaid Waiver are:

Total DON Score	SCM
29 through 32	\$1114 ----955
33 through 40	\$1280 --17097

## DEPARTMENT OF HUMAN SERVICES

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41 through 49      \$1424 --17220  
 50 through 59      \$1705 --17461  
 60 through 69      \$2004 --17717  
 70 through 79      \$2167 --17857  
 80 through 100    \$2329 --17996

c) The SCMs for individuals served under the AIDS Medicaid Waiver are:

Total DON Score	SCM
29 through 32	\$1435 --17230
33 through 40	2151 --17043
41 through 49	2868 --27458
50 through 59	3586 --37073
60 through 69	4304 --37608
70 through 79	5019 --47301
80 through 100	5738 --47917

d) The SCM for individuals served through the Medicaid Waiver for Ventilator Assisted Individuals shall be no higher than the comparable institutionalized cost of care for the individual, less the costs for equipment and supplies.

e) The SCM for an individual may be exceeded on a monthly basis to meet a temporary increase in need for services as long as the average monthly cost for services during the twelve month period does not exceed the SCM. Such an increase in services shall not last more than 3 months.

f) The monthly SCMs for individuals served under the Medicaid Waiver for Persons with a Brain Injury are:

Total DON Score	SCM
29 through 32	\$1242 --17064
33 through 40	1378 --17101
41 through 49	1531 --17312
50 through 59	1835 --17572
60 through 69	2157 --17848
70 through 79	2332 --17998
80 through 100	2507 --17148

(Source: Amended at 24 Ill. Reg. 17.1.0, effective \_\_\_\_\_)

## ILLINOIS REGISTER

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED RULES

- 1) Heading of the Part: Grants and Grant Funds Recovery
- 2) Code Citation: 89 Ill. Adm. Code 511
- 3) Section Numbers:

511.10	<u>Adopted Action:</u>
511.15	New Section
511.20	New Section
511.30	New Section
511.40	New Section
511.50	New Section
511.60	New Section
- 4) Statutory Authority: Implementing and authorizing by the Department of Human Services Act [20 ILCS 1305] and implementing Sections 7 and 8 of the Illinois Grant Funds Recovery Act [30 ILCS 705/7 and 8].
- 5) Effective Date of Rules: November 3, 2000
- 6) Does these rules contain an automatic repeal date? No
- 7) Does these rules contain incorporations by reference? No
- 8) A copy of the adopted rules, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: June 30, 2000, 24 Ill. Reg. 8723
- 10) Has JCAR issued a Statement of Objection to these rules? No
- 11) Differences between proposal and final version: In Section 511.30, added subsection (a) label at the beginning and then changed (a), (b) and (c) to 1), 2) and 3). Added (b) before last paragraph and changed "subsections 511.30 (b) and (c)" to "Subsection (b) and (c) of this Section". Later in this paragraph, changed "511.30(a)" to "subsection (a)".
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes
- 13) Will this rulemaking replace emergency rules currently in effect? Yes
- 14) Are there any amendments pending on this Part: No
- 15) Summary and Purpose of Rules: This rulemaking provides a uniform set of rules in the area of Grant and Grant Fund Recovery for DHS's service providers. There are approximately 2000 community agencies under contract

## DEPARTMENT OF HUMAN SERVICES

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to deliver services to DHS clients. Since the inception of the Department, these agencies has been subject to a variety of administrative rule requirements regarding grant fund recovery. This rulemaking, along with the amendment or repeal of current DHS rules, will provide these rules.

16) Information and questions regarding these adopted rules shall be directed to:

Ms. Susan Weir, Bureau Chief  
Bureau of Administrative Rules and Procedures  
Department of Human Services  
100 South Grand Avenue East  
3rd Floor, Harris Bldg.  
Springfield, Illinois 62762  
(217) 785-9772

The full text of adopted rules begins on the next page:

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED RULES

TITLE 89: SOCIAL SERVICES  
CHAPTER IV: DEPARTMENT OF HUMAN SERVICES

PART 511  
GRANTS AND GRANT FUNDS RECOVERY

Section	Purpose
511.10	Purpose
511.15	Definitions
511.20	Responsibility
511.30	Criteria for Recovery of Funds
511.40	Process for Recovery of Funds
511.50	Methods of Recovery
511.60	Prompt Payment Act

**AUTHORITY:** Implementing and authorized by the Department of Human Services Act [20 ILCS 1305] and implementing Sections 7 and 8 of the Illinois Grant Funds Recovery Act [30 ILCS 705/7 and 8].

**SOURCE:** Adopted by emergency rulemaking at 24 Ill. Reg. 9278, effective June 14, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. , effective \_\_\_\_\_.

**Section 511.10 Purpose**

General - All funds disbursed by the Department on a grant basis are subject to reconciliation and the recovery of lapsed funds. Grant funds recovery activity is based on the Illinois Grant Funds Recovery Act [30 ILCS 705]. The reconciliation will be based on one of the following methods at the election of the Department:

a) Eligible Expenditures v. Program Revenue - This method compares the eligible expenditures to the total Department grant revenues by program. An independent audit and associated supplemental revenue and expense schedule may be required from the provider. Eligible expenditures will be determined based on 89 Ill. Adm. Code 509.20, Allowable/Unallowable Costs and specific program requirements, if applicable.

b) Eligible Services Delivered v. Services Projected - This method compares the actual eligible services delivered to the services projected in the contract or agreement. If the services were based on a rate or unit of cost methodology, the number of eligible service units delivered times the rate or unit is compared to the total of all grant payments for that service.

At the beginning of each fiscal year, providers shall be notified in writing by the Department of the method of reconciliation. If the provider is not notified, then the method of reconciliation used in the previous fiscal year shall apply.



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## Section 511.15 Definitions

"Agency" - means the individual or organization with whom the Department has a contract/agreement for services. The term Provider is synonymous with agency.

"Day" - means a calendar day.

"Department" - means the Illinois Department of Human Services.

"Fee-for-Service" - means a program for which the payments are made on the basis of a rate, unit cost or allowable cost incurred and is based on a statement or bill as required by the Department. Payments made as a fee-for-service are not subject to the Illinois Grant Funds Recovery Act [30 ILCS 705].

"Grant" - means a program that receives all or part of the funding in advance of the actual delivery of services. This includes prorated prospective payments and payments made by the Department on an estimated basis or any other basis when the Department does not know the actual amount earned by the provider. This does not include advance payments made under the authority of Section 9.05 of the Illinois Finance Act [30 ILCS 105/9.05]. All funds paid as a grant are subject to the Illinois Grant Funds Recovery Act [30 ILCS 705].

"Secretary" - means the Secretary of the Illinois Department of Human Services.

## Section 511.20 Responsibility

- a) Grant funds reconciled on the basis of eligible expenditures versus program revenues are the responsibility of the Department's Office of Contract Administration.
- b) Grant funds reconciled on the basis of eligible services delivered versus services projected are the responsibility of the Department's office or division administering the program. At the request of the Secretary or the office or division responsible for the program, the Office of Contract Administration may serve as the Department's representative at any informal or formal hearings conducted under Sections 7 and 8 of the Illinois Grant Funds Recovery Act [30 ILCS 705/7 and 8].

## Section 511.30 Criteria for Recovery of Funds

- a) Grant funds shall be subject to recovery if the Department finds that the grant funds received by the Agency:
  - 1) Are determined to be subject to recovery based on one of the methods identified in Section 511.10;

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- 2) Were not spent in accordance with the grant agreement; or
- 3) Were not expended or legally obligated by the expiration of the grant
- b) Subsection (b) and (c) of this Section are applicable only to grants reconciled on the basis of eligible expenditures as opposed to program revenues (subsection (a)).

## Section 511.4) Process for Recovery of Funds

If the Department believes that grant funds received by the provider are subject to recovery, the process outlined in the Grant Funds Recovery Act shall be followed:

- a) The provider will be notified, in writing, by the Department of the amount subject for recovery. This notice will constitute an intent to recover by the Department. The notice will indicate the opportunity for an informal hearing to determine the facts and issues regarding the recoverable funds and who to contact to request an informal hearing.
- b) The provider must notify the Department in writing within 15 calendar days after receipt of the Department's letter that they are requesting an informal hearing.
- c) If the provider does not file a request for an informal hearing, the Department may initiate the recovery.
- d) If the informal hearing does not resolve the issues or if the provider does not request a hearing within the specified time in subsection (b), the Department will notify the provider in writing of the intent to recover. The letter will specify the amount to be recovered, the specific facts that permit recovery, and the right to a formal appeal.
- e) An agency electing to file an appeal in accord with subsection (d) shall notify the Department, in writing, of its request for a formal hearing, within 35 days from the receipt of the letter. If the provider requests a hearing, then the Department will take no action to recover funds until at least 35 days after the Department has issued the final recovery order.
- f) If the provider does not file an appeal, the Department may initiate the recovery.
- g) The hearing shall be presided over by an administrative law judge chosen by the Department.
- h) The provider shall have the burden of proof to show cause why no recovery should occur.
- i) If the decision of the hearing officer/administrative law judge is in favor of recovery, the Secretary shall approve the decision prior to implementing a recovery.
- j) The Secretary may elect to adopt, modify or reverse the recommended decision.
- k) The decision by the Secretary shall constitute the final administrative decision in accordance with Section 3-101 of the Administrative Review Law [735 ILCS 5/3-101].

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## NOTICE OF ADOPTED RULES

- 1) All written notices sent under this Section shall be sent by certified mail. Notices will be deemed received based on the date signed for by the recipient or the recipient's representative.

**Section 511.50 Methods of Recovery**

The Department may elect any one or combination of the following methods for recovery:

- a) Offset against existing grants or against grants to be made by the Department.
- b) Authorize the offset from existing grants or grants to be made by other grantor agencies.
- c) Authorize the Comptroller to offset any payments from any funds administered by the Comptroller for payment to the grantee, including, but not limited to, distributions of appropriated funds and payments of refunds.
- d) Initiate any debt collection method authorized by law to any private person.
- e) Remove the grantee from any of the Department's programs and forbid the grantee's participation in any future grant programs for a period not to exceed two years.

**Section 511.60 Prompt Payment Act**

The provisions of the Prompt Payment Act apply to this Part. This Part does not constitute a waiver of the provider's rights to recover a penalty for late payment as specified in the Act.

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## NOTICE OF ADOPTED RULES

- 1) Heading of the Part: Office of Inspector General Adults with Disabilities Abuse Project

- 2) Code Citation: 59 Ill. Adm. Code 51

- 3) Section Numbers: Adopted Action:

51.10	New
51.20	New
51.30	New
51.40	New
51.50	New
51.60	New
51.65	New
51.70	New
51.80	New
51.90	New

- 4) Statutory Authority: Implementing and authorized by the Abuse of Adults with Disabilities Intervention Act.

- 5) Effective Date of Rules: November 6, 2000

- 6) Does this rulemaking contain an automatic repeal date? No

- 7) Do these rules contain incorporations by reference? No

- 8) A copy of the adopted rules, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

- 9) Notice of Proposal Published in Illinois Register: July 14, 2000, 24 Ill. Reg. 10034

- 10) Has JCAR Issued a Statement of Objection to these rules? No

- 11) Differences between proposal and final version: In the Authority, changed cite from "24 ILCS 35" to "20 ILCS 2435".

In Section 51.40(a), added "suspected" after "the extent of" and before "abuse" and after "in assessing the" and "abuse".

In Section 51.90(h), changed "the" to "The".

- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

- 13) Will these rules replace emergency rules currently in effect? Yes

## DEPARTMENT OF HUMAN SERVICES

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1. Are there any amendments pending on this Part: No

2. Summary and Purpose of Rules: This rulemaking establishes the rules for the Department's Adult with Disabilities Project. The rules outline the project that is located in the DHS Office of Inspector General. The rules describe the Department's program to address alleged abuse, neglect and exploitation of adults with disabilities living in domestic living situations.

6. Information and questions regarding these adopted rules shall be directed to:

Ms. Susan Weir, Bureau Chief  
Bureau of Administrative Rules and Procedures  
Department of Human Services  
100 South Grand Avenue East  
3rd Floor, Harris Bldg.  
Springfield, Illinois 62762  
(217) 785-9772

The full text of adopted rules begins on the next page:

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED RULES

TITLE 59: MENTAL HEALTH

CHAPTER 1: DEPARTMENT OF HUMAN SERVICES

PART 51: OFFICE OF INSPECTOR GENERAL  
ADULTS WITH DISABILITIES ABUSE PROJECT

Section	Purpose of Project
51.10	Definitions
51.20	Reporting Abuse, Neglect or Exploitation of an Adult with Disabilities
51.30	Receipt of Reports
51.40	Assessment of Reports
51.50	Service Plan
51.60	Service Priority
51.65	Consent
51.70	Access of an Adult with Disabilities
51.80	Confidentiality
51.90	

AUTHORITY: Implementing and authorized by the Abuse of Adults with Disabilities Intervention Act [20 ILCS 2435].

SOURCE: Adopted by emergency rule at 24 Ill. Reg. 10362, effective July 1, 2000, for a maximum of 150 days; adopted at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## Section 51.10 Purpose of Project

The Office of Inspector General is responsible for establishing the Adults with Disabilities Abuse Project for adults with disabilities who are reported to have been abused, neglected or exploited. The purposes of this project are to:

- prevent, reduce and eliminate abuse, neglect and exploitation of adults with disabilities;
- recognize abuse, neglect and exploitation of adults with disabilities as a serious problem which takes on many forms, including physical abuse, sexual abuse, neglect, and exploitation, and to facilitate accessibility of services and remedies to provide immediate and effective assistance and protection;
- provide for the reporting and assessment of alleged and suspected abuse, neglect and exploitation of adults with disabilities;
- refer abused, neglected or exploited adults with disabilities to appropriate State and private agencies for emergency services, protection services, and other assistance necessary to prevent further harm;
- encourage and support the efforts of law enforcement officers to provide immediate, effective assistance and protection to adults with disabilities who are abused, neglected or exploited; and
- collect information on the incidence of abuse, neglect and exploitation of adults with disabilities and other data to aid in the



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establishment, coordination, and provision of adequate services to adults with disabilities in a timely, appropriate manner. [20 ILCS 2435/10]

## Section 51.20 Definitions

"Abuse" means causing any physical, sexual or mental injury to an adult with disabilities, including exploitation of the adult's financial resources. Nothing in this Part shall be construed to mean an adult with disabilities is a victim of abuse or neglect for the sole reason that he or she is being furnished with or relies upon treatment by spiritual means through prayer alone, in accordance with the tenets and practices of a recognized church or religious denomination. Nothing in this Part shall be construed to mean an adult with disabilities is a victim of abuse because of health care services provided or not provided by a licensed health care professional.

"Adult with disabilities" means a person age 18 through 59 who resides in a domestic living situation and whose physical or mental disability impairs his or her ability to seek or obtain protection from abuse, neglect or exploitation.

"Adults with Disabilities Abuse Project" or "Project" means the program within the Office of Inspector General designated by the Department of Human Services to receive and assess reports of alleged or suspected abuse, neglect or exploitation of adults with disabilities.

"Domestic living situation" means a residence where the adult with disabilities lives alone or with his or her family or household members, a care giver, or others or at a board and care home or other community-based unlicensed facility, but it is not:

A licensed facility as defined in Section 1-113 of the Nursing Home Care Act [210 ILCS 45/1-113].

A life care facility as defined in the Life Care Facilities Act [210 ILCS 40].

A home, institution or other place operated by the federal government, a federal agency, or the State.

A hospital, sanitarium, or other institution, the principal activity or business of which is the diagnosis, care, and treatment of human illness through the maintenance and operation of organized facilities and that is required to be licensed under the Hospital Licensing Act [210 ILCS 85].

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A community living facility as defined in the Community Living Facilities Licensing Act [210 ILCS 35].

A community-integrated living arrangement as defined in the Community-Integrated Living Arrangement Act [210 ILCS 135] or community residential alternative as licensed under that Act.

"Emergency" means a situation in which an adult with disabilities is in danger of death or great bodily harm.

"Exploitation" means the illegal, including tortious, use of the assets or resources of an adult with disabilities. Exploitation includes, but is not limited to, the misappropriation of assets or resources of an adult with disabilities by undue influence, by breach of a fiduciary relationship, by fraud, deception or extortion; or by the use of assets or resources in a manner contrary to law.

"Family or household members" means a person who as a family member, volunteer or paid care provider has assumed responsibility for all or a portion of the care of an adult with disabilities who needs assistance with the activities of daily living.

"Neglect" means the failure of another individual to provide an adult with disabilities with, or the willful withholding from an adult with disabilities of, the necessities of life, including, but not limited to, food, clothing, shelter, or medical care. Nothing in the definition of "neglect" shall be construed to impose a requirement that assistance be provided to an adult with disabilities over his or her objection in the absence of a court order, nor to create any new affirmative duty to provide support, assistance or intervention to an adult with disabilities. Nothing in this Part shall be construed to mean that an adult with disabilities is a victim of neglect because of health care services provided or not provided by licensed health care professionals.

"Physical abuse" includes sexual abuse and means any of the following:

knowing and reckless use of physical force, confinement or restraint;

knowing, repeated and unnecessary sleep deprivation; or

knowing and reckless conduct which creates an immediate risk of physical harm.

"Secretary" means the Secretary of the Department of Human Services.

"Sexual abuse" means touching, fondling, sexual threats, sexually

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inappropriate remarks or other sexual activity with an adult with disabilities when the adult with disabilities is unable to understand, unwilling to consent, threatened or physically forced to engage in sexual behavior.

"Substantiated case" means a reported case of alleged or suspected abuse, neglect or exploitation in which the Adults with Disabilities Abuse Project staff, after assessment, determines that there is reason to believe abuse, neglect or exploitation has occurred. [20 ILCS 2435/15]

#### Section 51.30 Reporting Abuse, Neglect or Exploitation of an Adult with Disabilities

a) Any person who has reasonable cause to believe abuse, neglect or exploitation of an adult with disabilities has occurred may report this to the Project.

1) The Project shall establish and maintain a single, statewide, TTY accessible, 24 hour toll free number that is available for all persons to use to report alleged or suspected abuse, neglect or exploitation of an adult with disabilities.

2) The Office of Inspector General shall make every effort to publicize this number to encourage public understanding of and cooperation in reporting and eliminating abuse, neglect or exploitation of an adult with disabilities.

3) The Office of Inspector General shall conduct training at least annually for persons taking reports on the statewide system and for persons conducting assessments or making referrals for service plans.

b) Any person, institution, or agency making a report or assessment under this Project in good faith, or providing information, participating in an assessment, or taking photographs or x-rays shall be immune from any civil or criminal liability on account of making a report to the Project.

c) The identity of a person making a report of alleged or suspected abuse, neglect or exploitation of an adult with disabilities under this part may be disclosed by the Office of Inspector General only with the person's written consent or a court order.

d) The privileged quality of communication between any licensed health care professional or any other person who reports abuse, neglect and exploitation and his or her client shall not apply to situations involving the abuse, neglect or exploitation of an adult with disabilities.

e) Use of a telecommunications device for the deaf constitutes an oral report.

f) Written reports may be taken. [20 ILCS 2435/25]

#### Section 51.40 Receipt of Reports

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a) All reports shall, if possible, include the name and address of the adult with disabilities, the name and address of the alleged abuser, if applicable, the nature and extent of the suspected abuse, neglect or exploitation, any evidence of previous abuse, neglect or exploitation, the time, date and location of the incident, the name and address of the reporter, and any other information that the reporter believes may be useful in assessing the suspected abuse, neglect or exploitation.

b) In the event of an emergency or other situation where police assistance may be warranted, the Office of Inspector General may contact the law enforcement agency that would provide the most immediate response.

c) When the Office of Inspector General believes that the death of an adult with disabilities may be the result of abuse, neglect or exploitation, it shall immediately report the matter to the coroner or medical examiner and shall cooperate fully with any subsequent investigation. [20 ILCS 2435/25]

#### Section 51.50 Assessment of Reports

a) The Project shall, upon receiving a report of alleged or suspected abuse, neglect or exploitation, obtain the consent of the subject of the report to conduct an assessment of the report. The assessment shall include, but not be limited to, a face-to-face interview with the adult with disabilities who is the subject of the report. This meeting may include a visit to the residence of the adult with disabilities and interviews or consultations with service agencies or individuals who may have knowledge of the circumstances of the adult with disabilities. A determination shall be made whether a report is substantiated.

b) If it is determined that there is clear and substantial risk of death or great bodily harm, the Office of Inspector General shall immediately secure or provide emergency protection services for the purpose of preventing further abuse, neglect or exploitation and for safeguarding the welfare of the adult with disabilities. Such service shall be provided in the least restrictive environment commensurate with the adult with disabilities' needs.

c) The Project shall initiate an assessment of all reports of alleged or suspected abuse or neglect within 7 calendar days after the report. Reports of abuse or neglect that indicate that the life or safety of an adult with disabilities is in imminent danger shall be assessed within 24 hours after the receipt of the report. Reports of exploitation shall be assessed within 30 calendar days after the report is received.

d) When the Project determines that a case is substantiated, it shall refer the case to the appropriate office within the Department of Human Services to develop, with the consent of and in consultation with the adult with disabilities, a service plan for the adult with

## DEPARTMENT OF HUMAN SERVICES

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*disabilities.*

- e) The Project staff shall refer reports of alleged and suspected abuse, neglect and exploitation to another State agency when that agency has a statutory obligation to investigate such reports.
- f) If the Project has reason to believe that a crime has been committed, the incident shall be reported to the appropriate law enforcement agency. [20 ILCS 2435/35]
- g) Project staff shall make reasonable accommodation of any disability of an adult, including but not limited to the regular use of sign language for any hearing impaired person for whom sign language is a primary mode of communication. If the adult with disabilities is unable to communicate effectively in English, Project staff shall make reasonable efforts to communicate in a language that the individual understands, which may involve the use of a translator or interpreter.

**Section 51.60 Service Plan**

- a) The service plan is a temporary plan of the actions developed to address the service/support needs of the adult with a disability. Any service plan shall be in place until the situation causing the abuse, neglect or exploitation of an adult with disabilities is ameliorated.
- b) A service plan shall be developed for each adult with disabilities in need of services and who accepts the services.
- c) The Department shall implement a service plan for substantiated cases within 14 calendar days after the report is substantiated. In emergency situations, the Department shall implement the service plan as soon as possible and in no event later than 2 working days after the case is substantiated. All appropriate emergency services shall remain in place until this service plan is implemented.

**Section 51.65 Service Priority**

The Department has the authority pursuant to Section 35 (c) of the Abuse of Adults with Disabilities Intervention Act to:

- a) Provide, on a priority basis, mental health and developmental services through Department supported community agencies or in state-operated facilities to eligible adults in substantiated cases of abuse, neglect or exploitation; and
- b) Waive, in an emergency, current eligibility requirements of such facilities and agencies.

This Section shall not be interpreted to be in conflict with the standards for admission to residential facilities as provided in the Mental Health and Developmental Disability Code [405 ILCS 5].

**Section 51.70 Consent**

- a) If the project receives a report of alleged or suspected abuse, neglect, or exploitation of an adult with disabilities who lacks the

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capacity to consent to an assessment or to services, the Project may seek, directly or through another agency, the appointment of a temporary or permanent guardian for assessment, provision of services, or any other decision-making authority as is appropriate for the individual as provided in Article XIA of the Probate Act of 1975 [755 ILCS 5/111a-1] or other relief as provided under the Illinois Domestic Violence Act of 1986 [750 ILCS 60]. For purpose of this Section only "lacks the capacity to consent" shall mean that the adult with disabilities reasonably appears to be unable by reason of physical or mental condition to receive and evaluate information related to the assessment or services, or to communicate decisions related to assessments or services.

- b) If the adult with disabilities consents to the assessment, such assessment shall be conducted. If the adult with disabilities consents to the services included in the service plan, such services shall be provided. If the adult with disabilities refuses or withdraws his or her consent to the completion of the assessment or the service plan, the assessment shall be terminated or the service shall not be provided.

- c) A guardian of the adult with disabilities who is abused, neglected or exploited by another individual in a domestic living situation may consent to an assessment or to services being provided pursuant to a service plan.

- 1) If the guardian is the alleged perpetrator of the abuse, neglect or exploitation, the Project shall seek the appointment of a temporary substitute guardian pursuant to Section 213.3 of the Illinois Domestic Violence Act of 1986 [750 ILCS 60/213.3] under the provisions of Article XIA of the Probate Act of 1975.

- 2) If a guardian withdraws his consent or refuses to allow an assessment or services to be provided to the adult with disabilities, the Project will seek directly or through another agency a court order seeking appropriate remedies, and may in addition request removal of the guardian and appointment of a successor guardian pursuant to the Probate Act. [20 ILCS 2435/45]

**Section 51.80 Access of an Adult with Disabilities**

If the Office of Inspector General is denied access to an adult with disabilities, it may seek assistance from appropriate law enforcement authorities.

**Section 51.90 Confidentiality**

All records concerning reports of abuse, neglect or exploitation of an adult with disabilities and all records generated as a result of the reports shall be confidential and shall not be disclosed except as specifically authorized by the Act or other applicable law. Access to records, but not access to the identity of the person or persons making a report of alleged abuse, neglect or



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exploitation that may be contained in the record, shall be allowed to the following persons and for the following reasons:

- a) Project staff in the furtherance of their responsibilities;
- b) A law enforcement agency investigating alleged or suspected abuse, neglect or exploitation of an adult with disabilities;
- c) An adult with disabilities reported to be abused, neglected or exploited, or his or her guardian unless the guardian is the alleged perpetrator of the abuse, neglect or exploitation;
- d) A court, upon its finding that access to records may be necessary for the determination of an issue before the court. However, the access shall be limited to an in camera inspection of the records, unless the court determines that disclosure of the information contained therein is necessary for the resolution of the issue then pending before it;
- e) A grand jury, upon its determination that access to the records is necessary to the conduct of its official business;
- f) Any person authorized by the Secretary, in writing, for audit or bona fide research purposes;
- g) A coroner or medical examiner who has reason to believe that abuse or neglect contributed to or resulted in the death of an adult with disabilities; or
- h) The agency designated pursuant to the Protection and Advocacy for Developmentally Disabled Persons Act [405 ILCS 40] and the Protection and Advocacy for Mentally Ill Persons Act [405 ILCS 45]. [20 ILCS 2435/55]

## DEPARTMENT OF PUBLIC AID

## NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Hospital Services
- 2) Code Citation: 89 Ill. Adm. Code 148
- 3) Section Numbers: Adopted Action:  
148.140 Amendment  
148.295 Amendment  
148.310 Amendment
- 4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [30 ILCS 5/12-13]
- 5) Effective Date of Amendments: November 1, 2000
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Do these amendments contain incorporations by reference? No
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: July 14, 2000 (24 Ill. Reg. 10051)
- 10) Has JCAR issued a Statement of Objection to this rulemaking? No
- 11) Differences Between Proposal and Final Version:

**Section 148.140**

In subsection (b)(4)(A), "(Psychiatric clinic Type A for adults)" has been added after "W7183".

In subsection (b)(4)(B), "5.a." has been changed to "5" and "only" has been added after "Type A".

In subsection (b)(4)(C), "6.b" has been changed to "6".

**Section 148.295**

In subsection (a)(3)(B), both occurrences of "subsection (a)(3)(A)" have been changed to "subsection (a)(3)(A)".

Subsection (b)(3) has been revised as follows, "Hospitals defined in subsection (b) above, that are located in a Health Professional Shortage Area (HPSA) (42 CFR 5) on July 1, 1999 as-of-the-first-day-of-duty-in-the CHAP-rate-period, shall". . .

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The beginning of subsection (e)(1)(B) has been revised by changing "Hospitals" to "Illinois hospitals".

Subsection (e)(1)(D) has been revised by changing "Teaching hospitals" to "Illinois teaching hospitals," and the comma after "programs" has been stricken.

In subsection (e)(1)(E), "located in Illinois" has been added after " , all other hospitals".

At the end of subsection (j)(3), " , as of July 1, 1999" has been added after "148.120(k)(6)".

Some text in Subsection (j)(7) has been stricken as follows: " contained within the Department's paid claims data base, with an-occurrence-code--of 63-when-applicable-and an ICD-9-CM principal".

In subsection (j)(12), all of the text in the last sentence, beginning with "For those hospitals", has been stricken.

No other changes have been made in the text of the proposed amendments.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes

13) Will these amendments replace emergency amendments currently in effect? Yes

14) Are there any other amendments pending on this Part? Yes

Sections	Proposed Action	Illinois Register Citation
148.40	Amendment	July 28, 2000 (24 Ill. Reg. 11150)

15) Summary and Purpose of Amendments:

These amendments concerning hospital services provide for certain reimbursement increases as required by the State's budget implementation plan for fiscal year 2001.

The revisions to Section 148.140 apply to outpatient services under the ambulatory procedure listing (APL) reimbursement system. For APL Group 5, psychiatric treatment services, and APL Group 6, physical rehabilitation services, children's hospitals will be reimbursed according to a new rate system. These changes are intended to make hospital billing more consistent for all age groups. Additionally, hospitals providing APL outpatient services will receive a one-time payment for services delivered between July 1, 1998 and June 30, 1999 in recognition of unexpected changes in the volume of Medicaid services. This payment amount will be

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determined on the basis of a specific rate amount paid for certain procedures including adult services, pediatric psychiatric services and pediatric physical rehabilitation services. Changes to Section 148.310 add a review procedure regarding the one-time payment.

Changes to Section 148.295 provide new qualitative criteria and specific rate increases concerning direct hospital adjustments (DHA) in the critical hospital adjustment program (CHAP). Some of these DHA increases will be calculated on the basis of a hospital's Medicaid inpatient utilization rate (MIUR). Hospitals with the greatest Medicaid service levels will receive the most significant DHAs. Other DHA changes are also being provided according to hospital type and either Total days, Obstetrical days, MIUR or Total admissions.

As a result of these amendments, the Department anticipates a spending increase of approximately \$14.4 million for hospital services during fiscal year 2001.

16) Information and questions regarding these adopted amendments shall be directed to:

Joanne Jones  
Office of the General Counsel, Rules Section  
Illinois Department of Public Aid  
201 South Grand Avenue East, Third Floor  
Springfield, Illinois 62763-0002  
(217) 524-0081

The full text of the adopted amendments begins on the next page:

## DEPARTMENT OF PUBLIC AID

## NOTICE OF ADOPTED AMENDMENTS

TITLE 89: SOCIAL SERVICES  
CHAPTER I: DEPARTMENT OF PUBLIC AID  
SUBCHAPTER d: MEDICAL PROGRAMS

PART 148  
HOSPITAL SERVICES

Section  
148.10 Hospital Services  
148.20 Participation  
148.25 Definitions and Applicability  
148.30 General Requirements  
148.40 Special Requirements  
148.50 Covered Hospital Services  
148.60 Services Not Covered as Hospital Services  
148.70 Limitation On Hospital Services  
148.80 Organ Transplant Services Covered Under Medicaid (Repealed)  
148.82 Organ Transplant Services  
148.90 Heart Transplants (Repealed)  
148.100 Liver Transplants (Repealed)  
148.110 Bone Marrow Transplants (Repealed)  
148.120 Disproportionate Share Hospital (DSH) Adjustments  
148.130 Outlier Adjustments for Exceptionally Costly Stays  
148.140 Hospital Outpatient and Clinic Services  
148.150 Public Law 103-66 Requirements  
148.160 Payment Methodology for County-Owned Hospitals in an Illinois County with a Population of Over Three Million  
148.170 Payment Methodology for Hospitals Organized Under the University of Illinois Hospital Act  
148.175 Supplemental Disproportionate Share Payment Methodology for Hospitals Organized Under the Town Hospital Act  
148.180 Payment for Pre-operative Days, Patient Specific Orders, and Services Which Can Be Performed in an Outpatient Setting  
148.190 Copayments  
148.200 Alternate Reimbursement Systems  
148.210 Filing Cost Reports  
148.220 Pre September 1, 1991 Admissions  
148.230 Admissions Occurring on or after September 1, 1991  
148.240 Utilization Review and Furnishing of Inpatient Hospital Services Directly or Under Arrangements  
148.250 Determination of Alternate Payment Rates to Certain Exempt Hospitals  
148.260 Calculation and Definitions of Inpatient Per Diem Rates  
148.270 Determination of Alternate Cost Per Diem Rates for All Hospitals; Payment Rates for Certain Exempt Hospital Units; and Payment Rates for Certain Other Hospitals  
148.280 Reimbursement Methodologies for Children's Hospitals and Hospitals Reimbursed Under Special Arrangements  
148.285 Excellence in Academic Medicine Payments

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148.290 Adjustments and Reductions to Total Payments  
148.295 Critical Hospital Adjustment Payment (CHAP)  
148.296 Supplemental Critical Hospital Adjustment Payments (SCHAP)  
148.297 Pediatric Outpatient Adjustment Payments  
148.298 Pediatric Inpatient Adjustment Payments  
148.300 Payment  
148.310 Review Procedure  
148.320 Alternatives  
148.330 Exemptions  
148.340 Substance Alcoholism and Substance Abuse Treatment Services  
148.350 Definitions (Repealed)  
148.360 Types of Substance Alcoholism and Substance Abuse Treatment Services (Repealed)  
148.368 Volume Adjustment (Repealed)  
148.370 Payment for Substance Alcoholism and Substance Abuse Treatment Services  
148.380 Rate Appeals for Substance Alcoholism and Substance Abuse Treatment Services (Repealed)  
148.390 Hearings  
148.400 Special Hospital Reporting Requirements

AUTHORITY: Implementing and authorized by Articles III, IV, V, VI, and Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. III, IV, V, VI and 12-13].

SOURCE: Sections 148.10 thru 148.390 recodified from 89 Ill. Adm. Code 140.94 thru 140.398 at 13 Ill. Reg. 9572; Section 148.120 recodified from 89 Ill. Adm. Code 140.110 at 13 Ill. Reg. 12118; amended at 14 Ill. Reg. 2553, effective February 9, 1990; emergency amendment at 14 Ill. Reg. 11392, effective July 1, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 15358, effective September 13, 1990; amended at 14 Ill. Reg. 16998, effective October 4, 1990; amended at 14 Ill. Reg. 18293, effective October 30, 1990; amended at 14 Ill. Reg. 18499, effective November 8, 1990; emergency amendment at 15 Ill. Reg. 10502, effective July 1, 1991, for a maximum of 150 days; emergency expired October 29, 1991; emergency amendment at 15 Ill. Reg. 12005, effective August 9, 1991, for a maximum of 150 days; emergency expired January 6, 1992; emergency amendment at 15 Ill. Reg. 16166, effective November 1, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 18684, effective December 23, 1991; amended at 16 Ill. Reg. 6255, effective March 27, 1992; emergency amendment at 16 Ill. Reg. 11335, effective June 30, 1992, for a maximum of 150 days; emergency expired November 27, 1992; emergency amendment at 16 Ill. Reg. 11942, effective July 10, 1992, for a maximum of 150 days; emergency amendment at 16 Ill. Reg. 14778, effective October 1, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 19873, effective December 7, 1992; amended at 17 Ill. Reg. 131, effective December 21, 1992; amended at 17 Ill. Reg. 3296, effective March 1, 1993; amended at 17 Ill. Reg. 6649, effective April 21, 1993; amended at 17 Ill. Reg. 14643, effective August 30, 1993; emergency amendment at 17 Ill. Reg. 17323, effective October 1, 1993, for a maximum of 150 days; amended



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at 18 Ill. Reg. 3450, effective February 28, 1994; emergency amendment at 18 Ill. Reg. 12853, effective August 2, 1994, for a maximum of 150 days; amended at 18 Ill. Reg. 14117, effective September 1, 1994; amended at 18 Ill. Reg. 17448, effective November 29, 1994; amended at 19 Ill. Reg. 1067, effective January 20, 1995; emergency amendment at 19 Ill. Reg. 3510, effective March 1, 1995, for a maximum of 150 days; emergency expired July 29, 1995; emergency amendment at 19 Ill. Reg. 6709, effective May 12, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 10060, effective June 29, 1995; emergency amendment at 19 Ill. Reg. 10752, effective July 1, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 13009, effective September 5, 1995; amended at 19 Ill. Reg. 16630, effective November 28, 1995; amended at 20 Ill. Reg. 872, effective December 29, 1995; amended at 20 Ill. Reg. 7912, effective May 31, 1996; emergency amendment at 20 Ill. Reg. 9281, effective July 1, 1996, for a maximum of 150 days; emergency amendment at 20 Ill. Reg. 12510, effective September 1, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 15722, effective November 27, 1996; amended at 20 Ill. Reg. 15722, effective November 27, 1996; amended at 21 Ill. Reg. 607, effective January 2, 1997; amended at 21 Ill. Reg. 8386, effective June 23, 1997; emergency amendment at 21 Ill. Reg. 9552, effective July 1, 1997, for a maximum of 150 days; emergency amendment at 21 Ill. Reg. 9822, effective July 2, 1997, for a maximum of 150 days; emergency amendment at 21 Ill. Reg. 10147, effective August 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 13349, effective September 23, 1997; emergency amendment at 21 Ill. Reg. 13675, effective September 27, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 16161, effective November 26, 1997; amended at 22 Ill. Reg. 1408, effective December 29, 1997; amended at 22 Ill. Reg. 3083, effective January 26, 1998; amended at 22 Ill. Reg. 11514, effective June 22, 1998; emergency amendment at 22 Ill. Reg. 13070, effective July 1, 1998, for a maximum of 150 days; emergency amendment at 22 Ill. Reg. 15027, effective August 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 16273, effective August 28, 1998; amendment at 22 Ill. Reg. 21490, effective November 25, 1998; amended at 23 Ill. Reg. 5784, effective April 30, 1999; amended at 23 Ill. Reg. 7115, effective June 1, 1999; amended at 23 Ill. Reg. 7908, effective June 30, 1999; emergency amendment at 23 Ill. Reg. 8213, effective July 1, 1999, for a maximum of 150 days; emergency amendment at 23 Ill. Reg. 12772, effective October 1, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 13621, effective November 1, 1999; amended at 24 Ill. Reg. 2400, effective February 1, 2000; amended at 24 Ill. Reg. 3845, effective February 25, 2000; emergency amendment at 24 Ill. Reg. 10386, effective July 1, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 11846, effective August 1, 2000; amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 148.140 Hospital Outpatient and Clinic Services**

## a) Fee-For-Service Reimbursement

1) Reimbursement for hospital outpatient services shall be made on a fee-for-service basis, except for:

A) Those services that meet the definition of the Ambulatory Procedure Listing (APL) as described in subsection (b) of

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this Section.

B) End stage renal disease treatment (ESRDT) services, as described in subsection (c) of this Section.

C) Those services provided by a Certified Pediatric Ambulatory Care Center (CPACC), as described in 89 Ill. Adm. Code 140.461(f)(1)(D) and Section 148.25(b)(5)(D).

D) Those services provided by a Critical Clinic Provider as described in subsection (e) of this Section.

2) Except for the procedures under the APL groupings described in subsection (b) of this Section, fee-for-service reimbursement levels shall be at the lower of the hospital's usual and customary charge to the public or the Department's statewide maximum reimbursement screens. Hospitals will be required to bill the Department utilizing specific service codes. However, all specific client coverage policies (relating to client eligibility and scope of services available to those clients) which pertain to the service billed are applicable to hospitals in the same manner as to non-hospital providers who bill fee for service.

3) With respect to those hospitals described in Section 148.25(b)(2)(A), the reimbursement rate described in subsection (a)(2) of this Section shall be adjusted on a retrospective basis. The retrospective adjustment shall be calculated as follows:

A) The reimbursement rates described in subsection (a)(2) of this Section shall be no less than the reimbursement rates in effect on June 1, 1992, except that this minimum shall be adjusted on the first day of July of each year by the annual percentage change in the per diem cost of inpatient hospital services as reported on the two most recent annual Medicaid cost reports.

B) The per diem cost of inpatient hospital services shall be calculated by dividing the total allowable Medicaid costs by the total allowable Medicaid days.

4) Maternal and Child Health Program rates, as described in 89 Ill. Adm. Code 140 Table M, shall be paid to Certified Hospital Ambulatory Primary Care Centers (CHAPCC), as described in 89 Ill. Adm. Code 140.461(f)(1)(A) and Section 148.25(b)(5)(A), Certified Hospital Organized Satellite Clinics (CHOSC), as described in 89 Ill. Adm. Code 140.461(f)(1)(B) and Section 148.25(b)(5)(B), and Certified Obstetrical Ambulatory Care Centers (COBACC), as described in 89 Ill. Adm. Code 140.461(f)(1)(C) and Section 148.25(b)(5)(C). Maternal and Child Health Program rates shall also be paid to Certified Pediatric Ambulatory Care Centers (CPACC), as described in 89 Ill. Adm. Code 140.461(f)(1)(D) and Section 148.25(b)(5)(D), for covered services as described in 89 Ill. Adm. Code 140.462(e)(3), that are provided to non-assigned Maternal and Child Health Program clients, as described in 89

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- Ill. Adm. Code 140.464(b)(1).
- 5) Certified Pediatric Ambulatory Care Centers (CPACC), as described in 89 Ill. Adm. Code 140.461(f)(1)(D) and Section 148.25(b)(5)(D), shall be reimbursed in accordance with 89 Ill. Adm. Code 140.464(b)(2) for assigned clients.
  - 6) Hospitals described in Sections 148.25(b)(2)(A) and 148.25(b)(2)(B) shall be required to submit outpatient cost reports to the Department within 90 days after the close of the facility's fiscal year.
  - 7) With the exception of the retrospective adjustment described in subsection (a)(3) of this Section, no year-end reconciliation is made to the reimbursement rates calculated under this Section.
  - b) Ambulatory Procedure Listing (APL)
    - Effective July 1, 1998, the Department will reimburse hospitals for certain hospital outpatient procedures as described in subsection (b)(1) of this Section.

## 1) APL Groupings

Under the APL, a list was developed that defines those technical procedures that require the use of the hospital outpatient setting, its technical staff or equipment. These procedures are separated into separate groupings based upon the complexity and historical costs of the procedures. The groupings are as follows:

## A) Surgical Groups

- i) Surgical group 1(a) consists of intense surgical procedures. Group 1(a) surgeries require an operating suite with continuous patient monitoring by anesthesia personnel. This level of service involves advanced specialized skills and highly technical operating room personnel using high technology equipment.
- ii) Surgical group 1(b) consists of moderately intense surgical procedures. Group 1(b) surgeries generally require the use of an operating room suite or an emergency room treatment suite, along with continuous monitoring by anesthesia personnel and some specialized equipment.
- iii) Surgical group 1(c) consists of low intensity surgical procedures. Group 1(c) surgeries may be done in an operating suite or an emergency room and require relatively brief operating times. Such procedures may be performed for evaluation or diagnostic reasons.
- iv) Surgical group 1(d) consists of surgical procedures of very low intensity. Group 1(d) surgeries may be done in an operating room or emergency room, have a low risk of complications, and include some physician-administered diagnostic and therapeutic procedures.

## B) Diagnostic and Therapeutic Groups

- i) Diagnostic and therapeutic group 2(a) consists of advanced or evolving technologically complex diagnostic or therapeutic procedures. Group 2(a) procedures are typically invasive and must be administered by a physician.
  - ii) Diagnostic and therapeutic group 2(b) consists of technologically complex diagnostic and therapeutic procedures that are typically non-invasive. Group 2(b) procedures typically include radiological consultation or a diagnostic study.
  - iii) Diagnostic and therapeutic group 2(c) consists of other diagnostic tests. Group 2(c) procedures are generally non-invasive and may be administered by a technician and monitored by a physician.
  - iv) Diagnostic and therapeutic group 2(d) consists of therapeutic procedures. Group 2(d) procedures typically involve parenterally administered therapeutic agents. Either a nurse or a physician is likely to perform such procedures.
- C) Group 3 reimbursement for services provided in a hospital emergency department will be made in accordance with one of the three levels described below. Emergency Services mean those services that are for a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, possessing an average knowledge of medicine and health, could reasonably expect that the absence of immediate attention would result in placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part. The determination of the level of service reimbursable by the Department shall be based upon the circumstances at the time of the initial examination, not upon the final determination of the client's actual condition, unless the actual condition is more severe.
- i) Emergency Level I refers to Emergency Services provided in the hospital's emergency department for the alleviation of severe pain or for immediate diagnosis and/or treatment of conditions or injuries that pose an immediate significant threat to life or physiologic function or requires an intense level of physician or nursing intervention. An "intense level" is defined as more than two hours of documented one-on-one nursing care or interactive treatment.
  - ii) Emergency Level II refers to Emergency Services that do not meet the above definition of Emergency Level I care, but that are provided in the hospital emergency

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department for a medical condition manifesting itself by acute symptoms of sufficient severity.

- iii) Non-Emergency/Screening Level means those services provided in the hospital emergency department that do not meet the requirements of Emergency Level I or II stated above. For such care, the Department will reimburse the hospital either applicable current FFS rates for the services provided or a screening fee, but not both.

D) Group 4 for observation services is established to reimburse such services that are provided when a patient's current condition does not warrant an inpatient admission but does require an extended period of observation in order to evaluate and treat the patient in a setting that provides ancillary resources for diagnosis or treatment with appropriate medical and skilled nursing care. The hospital may bill for both observation and other APL procedures but will be reimbursed only for the procedure (group) with the highest reimbursement rate. Observation services will be reimbursed under one of three categories: at least 60 minutes but less than six hours and 31 minutes of services; at least six hours and 31 minutes but less than 12 hours and 31 minutes of services; or 12 hours and 31 minutes or more of services.

E) Group 5 for psychiatric treatment services is established to reimburse for certain outpatient treatment psychiatric services that are provided by a hospital that is enrolled with the Department to provide inpatient psychiatric services. Under this group, the Department will reimburse, at different rates, Type A and Type B Psychiatric Clinic Services, as defined in Section 148.40(d)(2) and---the Illinois-Medicaid-State-Plan. A different rate will also be reimbursed to children's hospitals as defined in 89 Ill. Adm. Code 149.50(C)(3)(A).

F) Group 6 for physical rehabilitation services is established to reimburse for certain outpatient physical rehabilitation services. Under this group, the Department will reimburse for services provided by a hospital enrolled with the Department to provide inpatient physical rehabilitation services at a different rate than will be reimbursed for physical rehabilitation services provided by a hospital that is not enrolled with the Department to provide physical rehabilitation services. A different rate will also be reimbursed to children's hospitals as defined in 89 Ill. Adm. Code 149.50(C)(3)(A).

- 2) Each of the groups described in subsection (b)(1) of this Section will be reimbursed by the Department considering the following:

A) The Department will provide cost outlier payments for

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specific devices and drugs associated with specific APL procedures. Such payments will be made if:

- i) The device or drug is on an approved list maintained by the Department. In order to be approved, the Department will consider requests from medical providers and shall base its decision on medical appropriateness of the device or drug and the costs of such device or drug; and
  - ii) The provision of such devices or drugs is deemed to be medically appropriate for a specific client, as determined by the Department's physician consultants.
- B) Additional payment for such devices or drugs, as described in subsection (b)(2)(A) of this Section, will require prior authorization by the Department unless it is determined by the Department's professional medical staff that prior authorization is not warranted for a specific device or drug. When such prior authorization has been denied for a specific device or drug, the decision may be appealed as allowed by 89 Ill. Adm. Code 102.80(a)(7) and in accordance with the provisions for assistance appeals at 89 Ill. Adm. Code 104.

C) The amount of additional payment for devices or drugs, as described in subsection (b)(2)(A) of this Section, will be based on the following methodology:

- i) The product of a cost to charge ratio that, in the case of cost reporting hospitals as described in Section 148.130(d), or in the case of other non-cost reporting providers, equals 0.5 multiplied by the provider's total covered charges on the qualifying claim, less the APL payment rate multiplied by four;
- ii) If the result of subsection (b)(2)(C)(i) of this Section is less than or equal to zero, no additional payment will be made. If the result is greater than zero, the additional payment will equal the result of subsection (b)(2)(C)(i) of this Section, multiplied by 80 percent. In such cases, the provider will receive the sum of the APL payment and the additional payment for such high cost devices or drugs.

D) For county-owned hospitals located in an Illinois county with a population greater than three million, reimbursement rates for each of the reimbursement groups shall be specified by the Department. However, such rates shall be no lower than the rates in effect on June 1, 1992, except that this minimum shall be adjusted on the first day of July of each year by the annual percentage change in the per diem cost of inpatient hospital services as reported on the two most recent annual Medicaid cost reports. The per diem cost of inpatient hospital services is calculated by dividing the



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total allowable Medicaid costs by the total allowable Medicaid days.

E) Reimbursement rates for hospitals not required to file an annual cost report with the Department may be lower than those listed above.

F) Reimbursement for each APL group described in this subsection (b) shall be all-inclusive for all services provided by the hospital, regardless of the amount charged by a hospital. No separate reimbursement will be made for ancillary services or the services of hospital personnel. Exceptions to this provision are that hospitals shall be allowed to bill separately, on a fee-for-service basis, for professional outpatient services of a physician providing direct patient care who is salaried by the hospital, and occupational or speech therapy services provided in conjunction with rehabilitation services as described in subsection (b)(1)(F) of this Section. For the purposes of this Section, a salaried physician is a physician who is salaried by the hospital; a physician who is reimbursed by the hospital through a contractual arrangement to provide direct patient care; or a group of physicians with a financial contract to provide emergency department care. Under APL reimbursement, salaried physicians do not include radiologists, pathologists, nurse practitioners, or certified registered nurse anesthetists and no separate reimbursement will be allowed for such providers.

3) The assignment of procedure codes to each of the reimbursement groups in subsection (b)(1) of this Section are detailed in the Department's Hospital Handbook and in notices to providers.

4) A one-time fiscal year 2000 payment will be made to hospitals. Payment will be based upon the services, specified below, provided on or after July 1, 1998, and before July 1, 1999, which were submitted to the Department and determined eligible for payment (adjudicated) by the Department on or prior to April 30, 2000, excluding services for Medicare/Medicaid crossover claims and claims which resulted in a zero payment by the Department. A one-time amount of:

- A) \$27.75 will be paid for each services for procedure code W7183 (Psychiatric clinic Type A for adults).
- B) \$24.00 will be paid for each service for APL Group 5 (Psychiatric clinic Type A only) provided by a children's hospital as defined in 89 Ill. Adm. Code 149.50(c)(3)(A).
- C) \$15.00 will be paid for each service for APL Group 6 (Physical rehabilitation services) provided by a children's hospital as defined in 89 Ill. Adm. Code 149.50(c)(3)(A).

5) County Facility Outpatient Adjustment

A) Effective for services provided on or after July 1, 1995, county owned hospitals in an Illinois county with a

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population of over three million shall be eligible for a county facility outpatient adjustment payment. This adjustment payment shall be in addition to the amounts calculated under this Section and are calculated as follows:

i) Beginning with July 1, 1995, hospitals under this subsection shall receive an annual adjustment payment equal to total base year hospital outpatient costs trended forward to the rate year minus total estimated rate year hospital outpatient payments, multiplied by the resulting ratio derived when the value 200 is divided by the quotient of the difference between total base year hospital outpatient costs trended forward to the rate year and total estimated rate year hospital outpatient payments divided by one million.

ii) The county facility outpatient adjustment under this subsection shall be made on a quarterly basis.

B) County Facility Outpatient Adjustment Definition. The definitions of terms used with reference to calculation of the county facility outpatient adjustment are as follows:

- i) "Base Year" means the most recently completed State fiscal year.
- ii) "Rate Year" means the State fiscal year during which the county facility adjustment payments are made.
- iii) "Total Estimated Rate Year Hospital Outpatient Payments" means the Department's total estimated outpatient date of service liability, projected for the upcoming rate year.
- iv) "Total Hospital Outpatient Costs" means the statewide sum of all hospital outpatient costs derived by summing each hospital's outpatient charges derived from actual paid claims data multiplied by the hospital's cost-to-charge ratio.

6) No Year-End Reconciliation

With the exception of the retrospective rate adjustment described in subsection (b)(8) of this Section, no year-end reconciliation is made to the reimbursement rates calculated under this subsection (b).

7) Rate Adjustments

With respect to those hospitals described in Section 148.25(b)(2)(A), the reimbursement rates described in subsection (b)(5) of this Section shall be adjusted on a retrospective basis. The retrospective adjustment shall be calculated as follows:

A) The reimbursement rates described in subsection (b)(5) of this Section shall be no less than the reimbursement rates in effect on June 1, 1992, except that this minimum shall be adjusted on the first day of July of each year by the annual percentage change in the per diem

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cost of inpatient hospital services as reported on the two most recent annual Medicaid cost reports.

- B) The per diem cost of inpatient hospital services shall be calculated by dividing the total allowable Medicaid costs by the total allowable Medicaid days.

8) Services are available to all clients in geographic areas in which an encounter rate hospital or a county-operated outpatient facility is located. All specific client coverage policies (relating to client eligibility and scope of services available to those clients) which pertain to the service billed are applicable to hospitals reimbursed under the Ambulatory Care Program in the same manner as to encounter rate hospitals and to non-hospital and hospital providers who bill and receive reimbursement on a fee-for-service basis.

9) Hospitals described in Section 148.25(b)(2)(A) and (b)(2)(B) shall be required to submit outpatient cost reports to the Department within 90 days after the close of the facility's fiscal year.

- c) Payment for outpatient end-stage renal disease treatment (ESRDT) services provided pursuant to Section 148.40(c) shall be made at the Department's payment rates, as follows:

1) For inpatient hospital services provided pursuant to Section 148.40(c)(1), the Department shall reimburse hospitals pursuant to Sections 148.240 through 148.300 and 89 Ill. Adm. Code 149.

2) For outpatient services or home dialysis treatments provided pursuant to Section 148.40(c)(2) or (c)(3), the Department will reimburse hospitals and clinics for ESRDT services at a rate which will reimburse the provider for the dialysis treatment and all related supplies and equipment, as defined in 42 CFR 405.2163 (1994). This rate will be that rate established by Medicare pursuant to 42 CFR 405.2124 and 413.170 (1994).

3) Payment for non-routine services. For services which are provided during outpatient or home dialysis treatment pursuant to Section 148.40(c)(2) or (c)(3) but are not defined as a routine service under 42 CFR 405.2163 (1994), separate payment will be made to independent laboratories, pharmacies, and medical supply providers pursuant to 89 Ill. Adm. Code 140.430 through 140.434, 140.440 through 140.450, and 140.475 through 140.481, respectively.

4) Payment for physician services relating to ESRDT will be made separately to physicians, pursuant to 89 Ill. Adm. Code 140.400.

5) With respect to those hospitals described in Section 148.25(b)(2)(A), the reimbursement rates described in this subsection (c) shall be adjusted on a retrospective basis. The retrospective adjustment shall be calculated as follows:

- A) The reimbursement rates described in this subsection (c) shall be no less than the reimbursement rates in effect on June 1, 1992, except that this minimum shall be adjusted on

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the first day of July of each year by the annual percentage change in the per diem cost of inpatient hospital services as reported on the two most recent annual Medicaid cost reports.

- B) The per diem cost of inpatient hospital services shall be calculated by dividing the total allowable Medicaid costs by the total allowable Medicaid days.

6) With the exception of the retrospective rate adjustment described in subsection (c)(5) of this Section, no year-end reconciliation is made to the reimbursement rates calculated under this subsection (c).

7) Hospitals described in Section 148.25(b)(2)(A) and (b)(2)(B) of this Section shall be required to submit outpatient cost reports to the Department within 90 days after the close of the facility's fiscal year.

d) Non Hospital-Based Clinic Reimbursement

- 1) County-Operated Outpatient Facility Reimbursement  
Reimbursement for all services provided by county-operated outpatient facilities, as described in Section 148.25(b)(2)(C), that do not qualify as either a Maternal and Child Health Program managed care clinics, as described in 89 Ill. Adm. Code 140.461(f), or as a Critical Clinic Provider, as described in subsection (e) of this Section, shall be on an all-inclusive per encounter rate basis as follows:

A) Base Rate. The per encounter base rate shall be calculated as follows:

- i) Allowable direct costs shall be divided by the number of direct encounters to determine an allowable cost per encounter delivered by direct staff.

ii) The resulting quotient, as calculated in subsection (d)(1)(A)(i) of this Section, shall be multiplied by the Medicare allowable overhead rate factor to calculate the overhead cost per encounter.

iii) The resulting product, as calculated in subsection (d)(1)(A)(ii) of this Section, shall be added to the resulting quotient, as calculated in subsection (d)(1)(A)(i) of this Section to determine the per encounter base rate.

iv) The resulting sum, as calculated in subsection (d)(1)(A)(iii) of this Section, shall be the per encounter base rate.

B) Supplemental Rate

- i) The supplemental service cost shall be divided by the total number of direct staff encounters to determine the direct supplemental service cost per encounter.  
ii) The supplemental service cost shall be multiplied by the allowable overhead rate factor to calculate the supplemental overhead cost per encounter.

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iii) The quotient derived in subsection (d)(1)(B)(i) of this Section, shall be added to the product derived in subsection (d)(1)(B)(ii) of this Section, to determine the per encounter supplemental rate.

iv) The resulting sum, as described in subsection (d)(1)(B)(iii) of this Section, shall be the per encounter supplemental rate.

## C) Final Rate

i) The per encounter base rate, as described in subsection (d)(1)(A)(iv) of this Section, shall be added to the per encounter supplemental rate, as described in subsection (d)(1)(B)(iv) of this Section, to determine the per encounter final rate.

ii) The resulting sum, as determined in subsection (d)(1)(C)(i) of this Section, shall be the per encounter final rate.

iii) The per encounter final rate, as described in subsection (d)(1)(C)(ii) of this Section, shall be adjusted in accordance with subsection (d)(2) of this Section.

## 2) Rate Adjustments

Rate adjustments to the per encounter final rate, as described in subsection (d)(1)(C)(iii) of this Section, shall be calculated as follows:

A) The reimbursement rates described in subsections (d)(1)(A) through (d)(1)(C) and (e)(2) of this Section shall be no less than the reimbursement rates in effect on June 1, 1992, except that this minimum shall be adjusted on the first day of July of each year by the annual percentage change in the per diem cost of inpatient hospital services as reported on the two most recent annual Medicaid cost reports. The per diem cost of inpatient hospital services shall be calculated by dividing the total allowable Medicaid costs by the total allowable Medicaid days.

B) The per diem cost of inpatient hospital services shall be calculated by dividing the total allowable Medicaid costs by the total allowable Medicaid days.

C) The final rate described in subsection (d)(1)(C) of this Section shall be no less than \$147.09 per encounter.

3) County-operated outpatient facilities, as described in Section 148.25(b)(2)(C), shall be required to submit outpatient cost reports to the Department within 90 days after the close of the facility's fiscal year. No year-end reconciliation is made to the reimbursement calculated under this subsection (d).

4) Services are available to all clients in geographic areas in which an encounter rate hospital or a county-operated outpatient facility is located. All specific client coverage policies (relating to client eligibility and scope of services available

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to those clients) which pertain to the service billed are applicable to encounter rate hospitals in the same manner as to hospitals reimbursed under the Ambulatory Care Program and to non-hospital and hospital providers who bill and receive reimbursement on a fee-for-service basis.

## e) Critical Clinic Providers

1) Effective for services provided on or after September 27, 1997, a clinic owned or operated by a county with a population of over three million, that is within or adjacent to a hospital, shall qualify as a Critical Clinic Provider if the facility meets the efficiency standards established by the Department. The Department's efficiency standards under this subsection (e) require that the quotient of total encounters per facility fiscal year for the Critical Clinic Provider divided by total full time equivalent physicians providing services at the Critical Clinic Provider shall be greater than:

A) 2700 for reimbursement provided during the facility's cost reporting year ending during 1998,  
B) 2900 for reimbursement provided during the facility's cost reporting year ending during 1999,  
C) 3100 for reimbursement provided during the facility's cost reporting year ending during 2000,  
D) 3600 for reimbursement provided during the facility's cost reporting year ending during 2001, and  
E) 4200 for reimbursement provided during the facility's cost reporting year ending during 2002.

2) Reimbursement for all services provided by any Critical Clinic Provider shall be on an all-inclusive per-encounter rate which shall equal reported direct costs of Critical Clinic Providers for each facility's cost reporting period ending in 1995, and available to the Department as of September 1, 1997, divided by the number of Medicaid services provided during that cost reporting period as adjudicated by the Department through July 31, 1997.

3) Critical Clinic Providers, as described in this subsection (e), shall be required to submit outpatient cost reports to the Department within 90 days after the close of the facility's fiscal year. No year-end reconciliation is made to the reimbursement calculated under this subsection (e).

4) The reimbursement rates described in this subsection (e) shall be no less than the reimbursement rates in effect on July 1, 1992, except that this minimum shall be adjusted on the first day of July of each year by the annual percentage change in the per diem cost of inpatient hospital services as reported on the two most recent annual Medicaid cost reports. The per diem cost of inpatient hospital services shall be calculated by dividing the total allowable Medicaid costs by the total allowable Medicaid days.



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(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 148.295 Critical Hospital Adjustment Payments (CHAP)

Critical Hospital Adjustment Payments (CHAP) shall be made to all eligible hospitals excluding county-owned hospitals, as described in Section 148.25 (b)(1)(A), unless otherwise noted in this Section, and hospitals organized under the University of Illinois Hospital Act, as described in Section 148.25(b)(1)(B), for inpatient admissions occurring on or after July 1, 1998, in accordance with this Section.

## a) Trauma Center Adjustments (TCA)

The Department shall make a trauma center adjustment (TCA) to Illinois hospitals recognized, as of the first day of July in the CHAP rate period, as a Level I or Level II trauma center by the Illinois Department of Public Health (IDPH) in accordance with the provisions of subsections (a)(1) through (a)(3) below.

## 1) Level I Trauma Center Adjustment (TCA).

A) Criteria. Illinois hospitals that, on the first day of July in the CHAP rate period, are recognized as a Level I trauma center by the Illinois Department of Public Health shall receive the Level I trauma center adjustment.

B) Adjustment. Illinois hospitals meeting the criteria specified in subsection (a)(1)(A) above shall receive an adjustment as follows:

- i) Hospitals with Medicaid trauma admissions equal to or greater than the mean Medicaid trauma admissions, for all hospitals qualifying under subsection (a)(1)(A) above, shall receive an adjustment of \$21,365 per Medicaid trauma admission in the CHAP base period.
- ii) Hospitals with Medicaid trauma admissions less than the mean Medicaid trauma admissions, for all hospitals qualifying under subsection (a)(1)(A) above, shall receive an adjustment of \$14,165 per Medicaid trauma admission in the CHAP base period.

2) Level II Rural Trauma Center Adjustment (TCA). Illinois rural hospitals, as defined in Section 148.25(g)(3), that, on the first day of July in the CHAP rate period, are recognized as a Level II trauma center by the Illinois Department of Public Health shall receive an adjustment of \$11,565 per Medicaid trauma admission in the CHAP base period.

3) Level II Urban Trauma Center Adjustment (TCA). Illinois urban hospitals, as described in Section 148.25(g)(4), that, on the first day of July in the CHAP rate period, are recognized as Level II trauma centers by the Illinois Department of Public Health shall receive an adjustment of \$11,565 per Medicaid trauma admission in the CHAP base period, provided that such hospital meets the criteria described below:

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- A) The hospital is located in a county with no Level I trauma center; and
- B) The hospital is located in a Health Professional Shortage Area (HPSA) (42 CFR 5), as of the first day of July in the CHAP rate period, and has a Medicaid trauma admission percentage at or above the mean of the individual facility values determined in subsection (a)(3)(A) above; or the hospital is not located in a HPSA (42 CFR 5) and has a Medicaid trauma admission percentage that is at least the mean plus one standard deviation of the individual facility values determined in subsection (a)(3)(A) above.

## b) Rehabilitation Hospital Adjustment (RHA)

Illinois hospitals that, on the first day of July in the CHAP rate period, qualify as rehabilitation hospitals, as defined in 89 Ill. Adm. Code 149.50(c)(2), and that are accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF), shall receive a rehabilitation hospital adjustment in the CHAP rate period that consists of the following three components:

- 1) Treatment Component. All hospitals defined in subsection (b) above shall receive \$4,595 per Medicaid Level I rehabilitation admission in the CHAP base period.
- 2) Facility Component. All hospitals defined in subsection (b) above shall receive a facility component that shall be based upon the number of Medicaid Level I rehabilitation admissions in the CHAP base period as follows:

- A) Hospitals with fewer than 60 Medicaid Level I rehabilitation admissions in the CHAP base period shall receive a facility component of \$250,000 in the CHAP rate period.
- B) Hospitals with 60 or more Medicaid Level I rehabilitation admissions in the CHAP base period shall receive a facility component of \$575,000 in the CHAP rate period.
- 3) Health Professional Shortage Area Adjustment Component. Hospitals defined in subsection (b) above, that are located in a Health Professional Shortage Area (HPSA) (42 CFR 5) on July 1, 1999 as-of-the-first-day-of-July-in-the-CHAP-rate-period, shall receive \$300 per Medicaid Level I rehabilitation inpatient day in the CHAP base period.

## c) Direct Hospital Adjustment (DHA) Criteria

To qualify for the DHA under this subsection (c), hospitals must meet one of the following criteria:

- 1) Be an Illinois hospital located outside of Health Service Area (HSA) six that meets one of the following criteria:
  - A) Has a Medicaid inpatient utilization rate on the last day of June preceding the CHAP rate period, as defined in Section 148.120(k)(5), greater than 60 percent and has an average length of stay of less than ten days.
  - B) Is a major teaching hospital with 35 or more graduate medical education programs accredited by the American

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Accreditation Council for Graduate Medical Education, the American Osteopathic Association Division of Post-doctoral Training, or the American Dental Association Joint Commission on Dental Accreditation.

- 2) Be a hospital located in HSA six, excluding psychiatric and rehabilitation hospitals as defined in 89 Ill. Adm. Code 149.50(c)(1) and (c)(2), that meets one of the following criteria:

A) Is a hospital whose sum of the critical weighting factors is greater than one standard deviation above the mean of the summed critical weighting factors for all hospitals located within the same planning area. The critical weighting factor is determined as follows:

- i) Hospitals that, on the last day of June preceding the CHAP rate period, are designated as a Level III, II, or I Perinatal Center by the Illinois Department of Public Health shall receive a critical weighting factor of 10, 7.5, or 5 respectively depending on the hospital's perinatal level designation.

- ii) Hospitals that, on the last day of June preceding the CHAP rate period, are recognized as a Level I or II Trauma Center by the Illinois Department of Public Health shall receive a critical weighting factor of ten or five respectively depending on the hospital's trauma level designation.

- iii) Hospitals that, on the last day of June preceding the CHAP rate period, are eligible for disproportionate share payments as described in Section 148.120(g)(1) or (g)(2) shall receive a critical weighting factor of five.

- iv) Hospitals that have an occupancy ratio, as determined by the Illinois Department of Public Health (IDPH), based upon the most current IDPH published report entitled "Bed Count, Average Length of Stay, Average Daily Census and Percent Occupancy for Non-Federal Hospitals in Illinois", which is available to the Illinois Department of Public Aid on the last day of June preceding the CHAP rate period, which is equal to or greater than the mean occupancy ratio for all hospitals in the planning area shall receive a critical weighting factor of five.

- v) Hospitals that have Medicaid obstetrical care admissions in the CHAP base period and are equal to or greater than one-half a standard deviation above the mean Medicaid obstetrical care admissions in their planning area shall receive a critical weighting factor of ten. If the hospital's Medicaid obstetrical care admissions are greater than the mean but less

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than one-half a standard deviation above the mean Medicaid obstetrical care admissions in their planning area, the hospital shall receive a critical weighting factor of five.

- vi) Hospitals that on the last day of June preceding the CHAP rate period have a Medicaid inpatient utilization rate as defined in Section 148.120(k)(5) which is equal to or greater than one-half a standard deviation above the mean Medicaid inpatient utilization rate in their planning area, shall receive a critical weighting factor of ten. If the hospital's Medicaid inpatient utilization rate is greater than the mean but less than one-half a standard deviation above the mean Medicaid inpatient utilization rate in their planning area, the hospital shall receive a critical weighting factor of five.

- vii) Hospitals that have Medicaid general care admissions in the CHAP base period and are equal to or greater than one-half a standard deviation above the mean Medicaid general care admissions in their planning area shall receive a critical weighting factor of ten. If the hospital's Medicaid general care admissions are greater than the mean but less than one-half a standard deviation above the mean Medicaid general care admissions in their planning area, the hospital shall receive a critical weighting factor of five.

- viii) Hospitals which have a cost per day at 80 percent occupancy that is less than or equal to one-half a standard deviation below the mean cost per day at 80 percent occupancy in their planning area shall receive a critical weighting factor of ten. If the hospital's cost per day at 80 percent occupancy is greater than one-half a standard deviation below the mean cost per day at 80 percent occupancy but less than the mean cost per day at 80 percent occupancy in their planning area, the hospital shall receive a critical weighting factor of five.

- B) Is a major teaching hospital with 40 or more graduate medical education programs accredited by the American Accreditation Council for Graduate Medical Education, the American Osteopathic Association Division of Post-doc Training, or the American Dental Association Commission on Dental Accreditation.

- C) Is a hospital with 3,200 or more total Medicaid admissions in the CHAP base period.

- 3) Be a hospital qualifying under subsection (c)(2) above that has the highest number of Medicaid obstetrical care admissions in the CHAP base period.

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- 4) Be a hospital qualifying under subsection (c)(2) above that on the last day of June preceding the CHAP rate period, is designated as a Level III or II Perinatal Center by the Illinois Department of Public Health, and that has a Medicaid inpatient utilization rate, as defined in Section 148.120(k)(5), which is greater than one-half a standard deviation above the statewide mean Medicaid inpatient utilization rate, as defined in Section 148.120(k)(3), and that has at least one obstetrical graduate medical education program accredited by the American Accreditation Council for Graduate Medical Education, the American Osteopathic Association Division of Post-doctoral Training, or the American Dental Association Joint Commission on Dental Accreditation.
- 5) Be a children's hospital, which means a hospital devoted exclusively to caring for children. A hospital which includes a facility devoted exclusively to caring for children that is separately licensed as a hospital by a municipality shall be considered a children's hospital to the degree that the hospital's Medicaid care is provided to children.
- d) **DHA Adjustment**  
Calculation of the DHA is as follows:
- 1) Hospitals qualifying under subsection (c)(1)(A) above shall receive a DHA of \$60 multiplied by the DHA Medicaid days in the CHAP base period.
  - 2) Hospitals qualifying under subsection (c)(1)(B), (c)(2) or (c)(5) above shall receive a DHA of \$30 multiplied by the DHA Medicaid days in the CHAP base period.
  - 3) Hospitals qualifying under subsection (c)(5) above which have a Medicaid inpatient utilization rate, as defined in Section 148.120(k)(5), on the last day of June preceding the CHAP rate period, that is greater than 85 percent shall receive an additional \$20 multiplied by the DHA Medicaid days in the CHAP base period.
  - 4) Hospitals qualifying under subsection (c)(2)(B) above shall receive an additional \$10 multiplied by the DHA Medicaid days in the CHAP base period.
  - 5) Hospitals qualifying under subsections (c)(2)(A) and (c)(2)(B) of this Section will receive an additional \$20 multiplied by DHA Medicaid days in the CHAP base period.
  - 6) Hospitals qualifying under subsection (c)(3) or (c)(4) above shall receive an additional \$120 multiplied by the DHA Medicaid days in the CHAP base period if their Medicaid inpatient utilization rate, as defined in Section 148.120(k)(5), on the last day of June preceding the CHAP rate period, is equal to or greater than 50 percent; or \$65 multiplied by the DHA Medicaid days in the CHAP base period if their Medicaid inpatient utilization rate, as defined in Section 148.120(k)(5), on the last day of June preceding the CHAP rate period, is less than 50

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- percent.
- 7) Payments calculated according to the methodology in this subsection (d) shall end on September 30, 1999.
  - e) **Direct Hospital Adjustment (DHA) Criteria**
    - 1) **Qualifying Criteria**  
Hospitals may qualify for the DHA under this subsection (e) under the following categories:
      - A) Except for hospitals operated by the University of Illinois, children's hospitals, psychiatric hospitals, rehabilitation hospitals and long term stay hospitals, all other hospitals located in Health Service Area (HSA) 6 that either:
        - i) were eligible for Direct Hospital Adjustments under the CHAP program as of July 1, 1999, and had a Medicaid inpatient utilization rate (MIUR) equal to or greater than the Statewide mean in Illinois on July 1, 1999;
        - ii) were county owned hospitals as defined in 89 Ill. Adm. Code 149.25(b)(1)(A), and had a MIUR equal to or greater than the Statewide mean in Illinois on July 1, 1999.
        - iii) were eligible under the Supplemental Critical Hospital Adjustment Payment (SCHAP) program as of July 1, 1999, and had a MIUR equal to or greater than the Statewide mean in Illinois on July 1, 1999.
      - B) **Illinois hospitals** ~~Hospitals~~ located outside of HSA 6 that had a MIUR greater than 60 percent on July 1, 1999, and an average length of stay less than ten days. The following hospitals are excluded from qualifying under this subsection (e)(1)(B): children's hospitals; psychiatric hospitals; rehabilitation hospitals; and long term stay hospitals.
      - C) Children's hospitals, as defined under Section 149.50(c)(3), on July 1, 1999.
      - D) **Illinois teaching hospitals**, with more than 40 graduate medical education programs, on July 1, 1999, not qualifying in subsections (e)(1)(A), (B), or (C) above.
      - E) **Except for hospitals operated by the University of Illinois, children's hospitals, psychiatric hospitals, rehabilitation hospitals, long term stay hospitals and hospitals qualifying in subsections (e)(1)(A), (B), (C) or (D) of this Section, all other hospitals located in Illinois that had a MIUR equal to or greater than the mean plus one-half standard deviation on July 1, 1999, and provided more than 15,000 Total days.**
  - 2) **DHA Rates**
    - A) For hospitals qualifying under subsection (e)(1)(A) above, the DHA rates are as follows:
      - i) Hospitals that have a Combined MIUR that is equal to or greater than the Statewide mean Combined MIUR, but



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less than one standard deviation above the Statewide mean Combined MIUR, will receive \$20--per--day--for hospitals--that--do--not--provide--obstetrical--care--and \$115 per day for hospitals that do provide obstetrical care.

i) Hospital that have a Combined MIUR that is equal to or greater than one standard deviation above the Statewide mean Combined MIUR, but less than one and one-half standard deviation above the Statewide mean Combined MIUR, will receive \$40--per--day--for hospitals that do not provide obstetrical care, and \$155 per day for hospitals that do provide obstetrical care.

iii) Hospitals that have a Combined MIUR that is equal to or greater than one and one-half standard deviation above the Statewide mean Combined MIUR, but less than two standard deviations above the Statewide mean Combined MIUR, will receive \$80--per--day--for hospitals that do not provide obstetrical care, and \$175 per day for hospitals that do provide obstetrical care.

iv) Hospitals that have a Combined MIUR that is equal to or greater than two standard deviations above the Statewide mean Combined MIUR will receive \$100--per--day--for hospitals that do not provide obstetrical care, and \$195 per day for hospitals that do provide obstetrical care.

B) Hospitals qualifying under subsection (e)(1)(A) above, will also receive the following rates:

i) Hospitals with more than 30,000 Total days will have their rate increased by \$455 \$265 per day.

ii) Hospitals with more than 80,000 Total days will have their rate increased by an additional \$410 per day.

iii) Hospitals with more than 4,500 Obstetrical days will have their rate increased by \$110 per day.

iv) Hospitals with more than 5,500 Obstetrical days will have their rate increased by an additional \$185 \$375 per day.

v) Hospitals with an MIUR rate greater than 74 percent will have their rate increased by \$160 per day.

vi) Hospitals with an average length of stay less than 3.9 days will have their rate increased by \$45 per day.

C) Hospitals qualifying under subsection (e)(1)(B) above will receive the following rates:

i) Qualifying hospitals will receive a rate of \$330 per day.

ii) Qualifying hospitals with the more than 1,500 Obstetrical days will have their rate increased by \$225 per day.

D) Hospitals qualifying under subsection (e)(1)(C) above will

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receive the following rates:

i) Hospitals will receive a rate of \$30 per day.

ii) Hospitals located in Illinois and outside of HSA 5, that have a Medicaid inpatient utilization rate greater than 60 percent, will have their rate increased by \$60 per day.

iii) Hospitals located in Illinois and inside HSA 5, that have a Medicaid inpatient utilization rate greater than 80 percent, will have their rate increased by \$325 \$210 per day.

iv) Hospitals that are not located in Illinois that have a Medicaid inpatient utilization rate greater than 45 percent will have their rate increased by \$35 per day.

v) Hospitals with more than 3,200 Total admissions will have their rate increased by \$175 \$195 per day.

E) Hospitals qualifying under subsection (e)(1)(D) of this Section will receive the following rates:

i) Hospitals will receive a rate of \$45 per day.

ii) Hospitals with a MIUR between 18 percent and 19.75 percent will have their rate increased by an additional \$15 per day.

iii) Hospitals with a MIUR equal to or greater than 19.75 percent will have their rate increased by an additional \$50 per day.

F) Hospitals qualifying under subsection (e)(1)(E) of this Section will receive \$25 per day.

G) Hospitals that qualify under subsection (e)(1)(A)(iii) of this Section will have their rates multiplied by a factor of two.

## 3) DHA Payments

A) Payments under this subsection (e) will be made at least quarterly, beginning with the quarter ending December 31, 1999.

B) Payment rates will be multiplied by the Total days.

C) Total Payment Adjustments

i) For the CHAP rate period occurring in State fiscal year 2000, total payments will equal the methodologies described above, less the amount the hospital received under DHA and SCHAP for the quarter beginning July 1, 1999. For hospitals not qualifying for CHAP, DHA and SCHAP payments for the quarter ending September 30, 1999, total payments will equal the methodologies described above.

ii) For CHAP rate periods occurring after State fiscal year 2000, total payments will equal the methodologies described above.

f) Rural Critical Hospital Adjustment Payments (RCHAP)

Rural Critical Hospital Adjustment Payments (RCHAP) shall be made to

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rural hospitals, as described in 89 Ill. Adm. Code 140.80(j)(1), for certain inpatient admissions. The hospital qualifying under this subsection that has the highest number of Medicaid obstetrical care admissions during the CHAP base period shall receive \$400,000 per year. The Department shall also make a RCHAP adjustment payment to hospitals qualifying under this subsection at a rate that is the greater of:

- 1) the product of \$1,490 multiplied by the number of RCHAP Obstetrical Care Admissions in the CHAP base period, or
- 2) the product of \$150 multiplied by the number of RCHAP General Care Admissions in the CHAP base period.

g) Each eligible hospital's critical hospital adjustment payment for the CHAP rate period shall equal the sum of the amounts described in subsections (a), (b), (d) and (f) above. The critical hospital adjustment payments shall be paid to eligible hospitals on a quarterly basis.

h) Critical Hospital Adjustment Limitations

Hospitals that qualify for trauma center adjustments under subsection (a) shall not be eligible for the total trauma center adjustment if, during the CHAP rate period, the hospital is no longer recognized by the Illinois Department of Public Health as a Level I trauma center as required for the adjustment described in subsection (a)(1) above, or a Level II trauma center as required for the adjustment described in subsection (a)(2) or (a)(3) above. In these instances, the adjustments calculated shall be pro-rated, as applicable, based upon the date that such recognition ceased.

i) In order to maintain critical hospital access, the Department shall make an additional one time CHAP payment in fiscal year 1999 to hospitals that meet one of the following:

- 1) A hospital located in HSA six, with a sum critical weighting factor equal to or greater than 37.5 that has an MIUR as defined in Section 148.120(k)(5) that is equal to or greater than 60 percent. Such a hospital shall receive \$10.50 multiplied by the DHA Medicaid days in the CHAP base period.

2) A hospital qualifying under subsection (c)(1)(A) of this Section with the highest number of Medicaid obstetrical care admissions in the CHAP base period. Such a hospital shall receive \$59 multiplied by the DHA Medicaid days in the CHAP base period.

j) Critical Hospital Adjustment Payment Definitions

The definitions of terms used with reference to calculation of the CHAP required by this Section are as follows:

1) "CHAP base period" means State Fiscal Year 1994 for CHAP payments calculated for the July 1, 1995, CHAP rate period; State Fiscal Year 1995 for CHAP payments calculated for the July 1, 1996, CHAP rate period; etc.

2) "CHAP rate period" means, beginning July 1, 1995, the 12 month period beginning on July 1 of the year and ending June 30 of the following year.

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3) "Combined MIUR" means the sum of Medicaid Inpatient Utilization Rate (MIUR) as of July 1, 1999, and as defined in Section 148.120(k)(5), plus the Medicaid obstetrical inpatient utilization rate, as described in Section 148.120(k)(6), as of July 1, 1999.

4) "Cost per day at 80 percent occupancy" means the estimated inpatient cost per day had the hospital been operating at an 80 percent occupancy rate.

5) "Medicaid general care admission" means hospital inpatient admissions which were subsequently adjudicated by the Department through the last day of June preceding the CHAP rate period and contained within the Department's paid claims data base, for recipients of medical assistance under Title XIX of the Social Security Act, excluding admissions for normal newborns, Medicare/Medicaid crossover admissions, psychiatric and rehabilitation admissions.

6) "Medicaid inpatient day" means hospital inpatient days which were subsequently adjudicated by the Department through the last day of June preceding the CHAP rate period and contained within the Department's paid claims data base, for recipients of medical assistance under Title XIX of the Social Security Act, excluding days for normal newborns and Medicare/Medicaid crossover days.

7) "Medicaid Level I rehabilitation admissions" means those claims billed as Level I admissions which were subsequently adjudicated by the Department through the last day of June preceding the CHAP rate period and contained within the Department's paid claims data base, with an occurrence code of 63 when applicable--and an ICD-9-CM principal diagnosis code of: 054.3, 310.1 through 310.2, 320.1, 336.0 through 336.9, 344.0 through 344.2, 344.8 through 344.9, 348.1, 801.30, 803.10, 803.84, 806.0 through 806.19, 806.20 through 806.24, 806.26, 806.29 through 806.34, 806.36, 806.4 through 806.5, 851.06, 851.80, 853.05, 854.0 through 854.04, 854.06, 854.1 through 854.14, 854.16, 854.19, 905.0, 907.0, 907.2, 952.0 through 952.09, 952.10 through 952.16, 952.2, and V57.0 through V57.89, excluding admissions for normal newborns.

8) "Medicaid Level I rehabilitation inpatient day" means the days associated with the claims defined in subsection (j)(7) above.

9) "Medicaid obstetrical care admission" means hospital inpatient admissions which were subsequently adjudicated by the Department through the last day of June preceding the CHAP rate period and contained within the Department's paid claims data base, for recipients of medical assistance under Title XIX of Social Security Act, with an ICD-9-CM principal diagnosis code of 640.0 through 648.9 with a 5th digit of 1 or 2; 650; 651.0 through 659.9 with a 5th digit of 1, 2, 3, or 4; 660.0 through 669.9 with a 5th digit of 1, 2, 3, or 4; 670.0 through 676.9 with a 5th digit of 1 or 2; or V27 through V27.9; or V30 through V39.9; or

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any ICD-9-CM principal diagnosis code that is accompanied with a surgery procedure code between 72 and 75.99; and specifically excludes Medicare/Medicaid crossover claims.

10) "Medicaid psychiatric days", as used in subsection (j)(21) below, means hospital inpatient days for the Supplemental CHAP base that are billed to the Department with a category of service 21.

11) "Medicaid rehabilitation days", as used in subsection (j)(21) below, means hospital inpatient days for the Supplemental CHAP base that are billed to the Department with a category of service 22.

12) "Medicaid trauma admission" means those claims billed as admissions which were subsequently adjudicated by the Department through the last day of June preceding the CHAP rate period and contained within the Department's paid claims data base, with an ICD-9-CM principal diagnosis code of: 800.0 through 800.99, 801.0 through 801.99, 802.0 through 802.99, 803.0 through 803.99, 804.0 through 804.99, 805.0 through 805.99, 806.0 through 806.99, 807.0 through 807.99, 808.0 through 808.99, 809.0 through 809.99, 828.0 through 828.1, 839.0 through 839.9, 839.7 through 839.9, 850.0 through 850.9, 851.0 through 851.99, 852.0 through 852.99, 853.0 through 853.19, 854.0 through 854.19, 860.0 through 860.5, 861.0 through 861.37, 862.8, 863.0 through 863.99, 864.0 through 864.19, 865.0 through 865.19, 866.0 through 866.13, 867.0 through 867.9, 868.0 through 868.19, 869.0 through 869.1, 887.0 through 887.7, 896.0 through 896.3, 897.0 through 897.7, 900.0 through 900.9, 902.0 through 904.9, 925, 926.8, 929.0 through 929.99, 958.4, 958.5, 990 through 994.99. For those hospitals recognized as level I trauma centers--society--for--pediatric--trauma--cases, Medicaid--trauma--admissions--are--only--calculated--for--the--claims billed--as--admissions--excluding--admissions--for--normal--newborns which were subsequently adjudicated by the Department through the last day of June preceding the CHAP rate period and contained within the Department's paid claims data base, with--ICD-9-CM diagnoses--within--the--above--ranges--for--children--under--the--age--of 18--excluding--admissions--for--normal--newborns.

13) "Medicaid trauma admission percentage" means a fraction, the numerator of which is the hospital's Medicaid trauma admissions and the denominator of which is the total Medicaid trauma admissions in a given 12 month period for all level II urban trauma centers.

14) "RCHAP general care admission" means Medicaid General Care Admissions, as defined in subsection (j)(5) above, less RCHAP Obstetrical Care Admissions, occurring in the CHAP base period.

15) "RCHAP obstetrical care admissions" means Medicaid General Care Admissions, as defined in subsection (j)(5) above, with a Diagnosis Related Group (DRG) of 370 through 375, occurring in the CHAP base period.

16) "Total admissions" means total paid admission contained in the

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Department's paid claims database, including obstetrical admissions multiplied by two and excluding Medicare crossover admissions, for dates of service occurring in State fiscal year 1998 and adjudicated through June 30, 1999.

17) "Total days" means total paid days contained in the Department's paid claims database, including obstetrical days multiplied by two and excluding Medicare crossover days, for dates of service occurring in State fiscal year 1998 and adjudicated through June 30, 1999.

18) "Total obstetrical days" means hospital inpatient days for dates of service occurring in State fiscal year 1998 and adjudicated through June 30, 1999, with an ICD-9-CM principal diagnosis code of 640.0 through 648.9 with a 5th digit of 1 or 2; 650; 651.0 through 659.9 with a 5th digit of 1, 2, 3, or 4; 660.0 through 669.9 with a 5th digit of 1, 2, 3, or 4; 670.0 through 676.9 with a 5th digit of 1 or 2; V27 through V27.9; V30 through V39.9; or any ICD-9-CM principal diagnosis code that is accompanied with a surgery procedure code between 72 and 75.99; and specifically excludes Medicare/Medicaid crossover claims.

19) "Total Medicaid admissions" means hospital inpatient admissions for the CHAP base period for recipients of medical assistance under Title XIX of the Social Security Act, excluding admissions for normal newborns and Medicare/Medicaid crossover admissions.

20) "Total Medicaid days" means hospital inpatient days for the CHAP base period for recipients of medical assistance under Title XIX of the Social Security Act, excluding days for normal newborns and Medicare/Medicaid crossover admissions.

21) "DHA Medicaid days" means total Medicaid days that include Medicaid psychiatric days and Medicaid rehabilitation days for the CHAP base period multiplied by a factor of two.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 148.310 Review Procedure

## a) Inpatient Rate Reviews

1) Hospitals shall be notified of their inpatient rate for the rate year and shall have an opportunity to request a review of the rate for errors in calculation. Such a request must be received in writing by the Department within 30 days after the date of the Department's notice to the hospital of their rates. The Department shall notify the hospital of the results of the review within 30 days after receipt of the hospital's request for review.

2) Hospitals reimbursed in accordance with Sections 148.250 through 148.300 and 89 Ill. Adm. Code 149 with respect to per diem add-ons for capital may request that an adjustment be made to



their base year costs to reflect significant changes in costs which have been mandated in order to meet State, federal or local health and safety standards, and which have occurred since the hospital's filing of the base year cost report. The allowable Medicare/Medicaid costs must be identified from the most recent audited cost report available. These costs must be significant, i.e., on a per unit basis, they must constitute one percent or more of the total allowable Medicaid/Medicare unit costs for the same time period. Appeals for base year cost adjustments must be received, in writing, by the Department within 30 days after the date of the Department's notice to the hospital of their rates. Such request shall include a clear explanation of the cost change and documentation of the desired correction. The Department shall notify the hospital of the results of the review within 30 days after receipt of the hospital's request for review.

b) DSH Determination Reviews

1) Hospitals shall be notified of their qualification for DSH payment adjustments and shall have an opportunity to request a review of the DSH add-on for errors in calculation. Such a request must be received in writing by the Department within 30 days after the date of the Department's notice to the hospital of its disproportionate share qualification and add-on calculations. Such request shall include a clear explanation of the error and documentation of the desired correction. The Department shall notify the hospital of the results of the review within 30 days after receipt of the hospital's request for review.

2) DSH determination reviews shall be limited to the following:

- A) DSH Determination Criteria. The criteria for DSH determination shall be in accordance with Section 148.120. Review shall be limited to verification that the Department utilized criteria in accordance with State regulations.
- B) Medicaid Inpatient Utilization Rates. Medicaid inpatient utilization rates shall be calculated pursuant to Section 1923 of the Social Security Act and as defined in Section 148.120(k)(5). Review shall be limited to verification that Medicaid inpatient utilization rates were calculated in accordance with federal and State regulations.
- C) Low Income Utilization Rates. Low income utilization rates shall be calculated in accordance with Section 1923 of the Social Security Act and Section 148.120(a)(2) and (d). Review shall be limited to verification that low income utilization rates were calculated in accordance with federal and State regulations.
- D) Federally Designated Health Manpower Shortage Areas (HMSAs). Illinois hospitals located in federally designated HMSAs shall be identified in accordance with 42 CFR 5, (1989), and Section 148.120(a)(3) based upon the methodologies utilized by, and the most current information available to the

Department from the Department of Health and Human Services as of June 30, 1992. Review shall be limited to hospitals in locations that have failed to obtain designation as federally designated HMSAs only when such a request for review is accompanied by documentation from the Department of Health and Human Services substantiating that the hospital was located in a federally designated HMSA as of June 30, 1992.

E) Excess Beds. Excess bed information shall be determined in accordance with Public Act 86-268 (Code Section 148.120(a)(3) and 77 Ill. Adm. Code 1100) based upon the methodologies utilized by, and the most current information available to, the Illinois Health Facilities Planning Board as of July 1, 1991. Reviews shall be limited to requests accompanied by documentation from the Illinois Health Facilities Planning Board substantiating that the information supplied to and utilized by the Department was incorrect.

F) Medicaid Obstetrical Inpatient Utilization Rates. Medicaid obstetrical inpatient utilization rates shall be calculated in accordance with Section 148.120(a)(4), (k)(4), (k)(6) and (k)(7). Review shall be limited to verification that Medicaid obstetrical inpatient utilization rates were calculated in accordance with State regulations.

c) Outlier Adjustment Reviews

The Department shall make outlier adjustments to payment amounts in accordance with 89 Ill. Adm. Code 149.105 or Section 148.130, whichever is applicable. Hospitals shall be notified of the specific information which shall be utilized in the determination of those services qualified for an outlier adjustment and shall have an opportunity to request a review of such specific information for errors in calculation only. Such a request must be received in writing by the Department within 30 days after the date of the Department's notice to the hospital of the specific information which shall be utilized in the determination of those services qualified for an outlier adjustment. Such request shall include a clear explanation of the error and documentation of the desired correction. The Department shall notify the hospital of the results of the review within 30 days after receipt of the hospital's request for review.

d) Cost Report Reviews

- 1) Cost reports are required from:
  - A) All enrolled hospitals within the State of Illinois;
  - B) All out-of-state hospitals providing 100 inpatient days of service per hospital fiscal year, to persons covered by the Illinois Medical Assistance Program; and
  - C) All hospitals not located in Illinois that elect to be reimbursed under the methodology described in 89 Ill. Adm. Code 149 (the DRG PPS).

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2) The completed cost statement with a copy of the hospital's Medicare cost report and audited financial statement must be submitted annually within 90 days of the close of the hospital's fiscal year. A one-time 30-day extension may be requested. Such a request for an extension shall be in writing and shall be received by the Department's Office of Health Finance prior to the end of the 90-day filing period. The Office of Health Finance shall audit the information shown on the Hospital Statement of Reimbursable Cost and Support Schedules. The audit shall be made in accordance with generally accepted auditing standards and shall include tests of the accounting and statistical records and applicable auditing procedures. Hospitals shall be notified of the results of the final audited cost report which may contain adjustments and revisions which may have resulted from the audited Medicare Cost Report. Hospitals shall have the opportunity to request a review of the final audited cost report. Such a request must be received in writing by the Department within 45 days after the date of the Department's notice to the hospital of the results of the finalized audit. Such request shall include all items of documentation and analysis which support the request for review. No additional data shall be accepted after the 45 day period. The Department shall notify the hospital of the results of the review within 30 days after receipt of the hospital's request for review.

## e) Trauma Center Adjustment Reviews

1) The Department shall make trauma care adjustments in accordance with Section 148.290(c). Hospitals shall have the right to appeal the trauma center adjustment calculations if it is believed that a technical error has been made in the calculation.

2) Trauma level designation is obtained from the Illinois Department of Public Health as of the first day of July preceding the trauma center adjustment rate period. Review shall be limited to requests accompanied by documentation from the Illinois Department of Public Health, or the licensing agency in the state in which the hospital is located, substantiating that the information supplied to and utilized by the Department was incorrect.

3) Appeals under this subsection (e) must be in writing and must be received within 30 days after the date of the Department's notice to the hospital of its qualification for trauma center adjustments and payment amounts. Such a request shall include a clear explanation of the reason for the appeal and documentation of the desired correction. The Department shall notify the hospital of the results of the review within 30 days after receipt of the hospital's request for review.

## f) Medicaid High Volume Adjustment Reviews

The Department shall make Medicaid high volume adjustments in

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accordance with Section 148.290(d). Review shall be limited to verification that the Medicaid inpatient days were calculated in accordance with State regulations. The appeal must be in writing and must be received within 30 days after the date of the Department's notice to the hospital of its qualification for Medicaid high volume adjustments and payment adjustment amounts. Such a request shall include a clear explanation of the reason for the appeal and documentation of the desired correction. The Department shall notify the hospital of the results of the review within 30 days after receipt of the hospital's request for review.

## g) Sole Community Hospital Designation Reviews

The Department shall make sole community hospital designations in accordance with 89 Ill. Adm. Code 149.125(b). Hospitals shall have the right to appeal the designation if it is believed that a technical error has been made in the determination. The appeal must be made in writing and must be received within 30 days after notification of the designation. Such a request shall include a clear explanation of the reason for the appeal and documentation of the desired correction. The Department shall notify the hospital of the results of the review no later than 30 days after receipt of the hospital's request for review.

## h) Geographic Designation Reviews

1) The Department shall make rural hospital designation in accordance with Section 148.25(g)(3). Hospitals shall have the right to appeal the designation if it is believed that a technical error has been made in the determination. The appeal must be in writing and must be received within 30 days after notification of the designation. Such a request shall include a clear explanation of the reason for the appeal and documentation of the desired correction. The Department shall notify the hospital of the results of the review no later than 30 days after receipt of the hospital's request for review.

2) The Department shall make urban hospital designations in accordance with Section 148.25(g)(4). Hospitals shall have the right to appeal the designation if it is believed that a technical error has been made in the determination. The appeal must be in writing and must be received 30 days after notification of the designation. Such a request shall include a clear explanation of the reason for the appeal and documentation of the desired correction. The Department shall notify the hospital of the results of the review no later than 30 days after receipt of the hospital's request for review.

## i) Critical Hospital Adjustment Payment (CHAP) Reviews

1) The Department shall make CHAP payments in accordance with Section 148.295. Hospitals shall be notified in writing of the results of the CHAP determination and calculation, and shall have the right to appeal the CHAP calculation or their ineligibility for the CHAP if it is believed that a technical error has been

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made in the calculation. The appeal must be in writing and must be received within 30 days after the date of the Department's notice to the hospital of its qualification for CHAP and payment adjustment amounts, or a letter of notification that the hospital does not qualify for the CHAP. Such a request shall include a clear explanation of the reason for the appeal and documentation of the desired correction. The Department shall notify the hospital of the results of the review within 30 days after receipt of the hospital's request for review.

2) CHAP determination reviews shall be limited to the following:

- A) Federally Designated Health Professional Shortage Areas (HPSAs). Illinois hospitals located in federally designated HPSAs shall be identified in accordance with 42 CFR 5, and Section 148.295(a)(3)(B) and (b)(3) based upon the methodologies utilized by, and the most current information available to, the Department from the Department of Health and Human Services as of the last day of June preceding the CHAP rate period. Review shall be limited to hospitals in locations that have failed to obtain designation as federally designated HPSAs only when such a request for review is accompanied by documentation from the Department of Health and Human Services substantiating that the hospital was located in a federally designated HPSA as of the last day of June preceding the CHAP rate period.
- B) Trauma level designation. Trauma level designation is obtained from the Illinois Department of Public Health as of the last day of June preceding the CHAP rate period. Review shall be limited to requests accompanied by documentation from the Illinois Department of Public Health, substantiating that the information supplied to and utilized by the Department was incorrect.
- C) Accreditation of Rehabilitation Facilities. Accreditation of rehabilitation facilities shall be obtained from the Commission on Accreditation of Rehabilitation Facilities as of the last day of June preceding the CHAP rate period. Review shall be limited to requests accompanied by documentation from the Commission, substantiating that the information supplied to and utilized by the Department was incorrect.
- D) Medicaid Inpatient Utilization Rates. Medicaid inpatient utilization rates shall be calculated pursuant to Section 1923 of the Social Security Act and as defined in Section 148.120(k)(5). Review shall be limited to verification that Medicaid inpatient utilization rates were calculated in accordance with federal and State regulations.
- E) Perinatal level designation. Perinatal level designation is obtained from the Illinois Department of Public Health as of the last day of June preceding the CHAP rate period. Review

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shall be limited to requests accompanied by documentation from the Illinois Department of Public Health, substantiating that the information supplied to and utilized by the Department was incorrect.

- F) Disproportionate share eligibility. Disproportionate share eligibility shall be determined pursuant to Section 148.120. Review shall be limited to verification that the Department utilized criteria in accordance with State regulations.

- G) Occupancy ratio. The occupancy ratio shall be obtained from the Illinois Department of Public Health's published report entitled "Bed Count, Average Length of Stay, Average Daily Census and Percent Occupancy for Non-Federal Hospitals in Illinois" as of the last day of June preceding the CHAP rate period. Review shall be limited to requests accompanied by documentation from the Illinois Department of Public Health, substantiating that the information supplied to and used by the Department was incorrect.

- H) Graduate Medical Education Programs. Graduate Medical Education program information shall be obtained from the most recently published report of the American Accreditation Council for Graduate Medical Education, the American Osteopathic Association Division of Post-doctoral Training, or the American Dental Association Joint Commission on Dental Accreditation as of the last day of June preceding the CHAP rate period. Review shall be limited to requests accompanied by documentation from the above, substantiating that the information supplied to and utilized by the Department was incorrect.

- J) Supplemental Critical Hospital Adjustment Payment (SCHAP) Reviews. The Department shall make SCHAP payments in accordance with Section 148.296. Hospitals shall be notified in writing of the results of the SCHAP determination and calculation, and shall have the right to appeal the SCHAP calculation or their ineligibility for SCHAP payments if it is believed that a technical error has been made in the calculation. The appeal must be in writing and must be received within 30 days after the date of the Department's notice to the hospital of its qualification for SCHAP and payment adjustment amounts, or a letter of notification that the hospital does not qualify for SCHAP payments. Such a request must include a clear explanation of the reason for the appeal and documentation that supports the desired correction. The Department shall notify the hospital of the results of the review within 30 days after receipt of the hospital's request for review.

- K) Pediatric Outpatient Adjustment Payments. The Department shall make Pediatric Outpatient Adjustment payments in accordance with Section 148.297. Hospitals shall be notified in writing of the results of the determination and calculation, and shall have the right to appeal the calculation or their ineligibility for payments under Section 148.297



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if it is believed that a technical error has been made in the calculation. The appeal must be in writing and must be received within 30 days after the date of the Department's notice to the hospital of its qualification under Section 148.297 and payment adjustment amounts, or a letter of notification that the hospital does not qualify for such payments. Such a request must include a clear explanation of the reason for the appeal and documentation that supports the desired correction. The Department shall notify the hospital of the results of the review within 30 days after receipt of the hospital's request for review.

- 1) A one-time fiscal year 2000 payment. The Department shall make a one-time fiscal year 2000 payment to hospitals based upon the services as specified at Section 148.140(b)(4). Hospitals shall be notified in writing of the results of the determination and calculation, and shall have the right to appeal the calculation or their ineligibility for payments under Section 148.140(b)(4) if it is believed that a technical error has been made in the calculation. The appeal must be submitted in writing to the Department and must be received or postmarked within 30 days after the date of the Department's notice to the hospital of its qualification under Section 148.140 and payment amounts, or a letter of notification that the hospital does not qualify for such payments. Such a request must include a clear explanation of the reason for the appeal and documentation that supports the desired correction. The Department shall notify the hospital of the results of the review within 30 days after receipt of the hospital's request for review.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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- 1) Heading of the Part: Community Living Facilities Code
- 2) Code Citation: 77 Ill. Adm. Code 370
- 3) Section Numbers: 370.715 Adopted Action: Amendment
- 4) Statutory Authority: Community Living Facilities Code (210 ILCS 35)
- 5) Effective date of amendments: November 1, 2000
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain any incorporations by reference? No
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal was Published in Illinois Register: March 17, 2000 - 24 Ill. Reg. 4088
- 10) Has JCAR issued a Statement of Objection to this amendment? No
- 11) Difference between proposal and final version: The following changes were made in response to comments received during the first notice or public comment period: None  
In addition, various typographical, grammatical and form changes were made in response to the comments from JCAR.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? No changes were requested.
- 13) Will these amendments replace emergency amendments currently in effect?  
No
- 14) Are there any other amendments pending on this Part? No
- 15) Summary and purpose of the amendments: The rules in Part 370 regulate the licensure of community living facilities. Section 370.715 (Health Care Worker Background Check) is amended to implement P.A. 91-598 (effective January 1, 2000). A facility will be prohibited from hiring, employing or retaining a person with direct care duties if the facility becomes aware that the individual has been convicted in another state of committing or attempting to commit an offense that has the same or similar elements as a disqualifying crime under the Health Care Worker Background Check Act, as verified by court records, records from a State agency, or an FBI criminal

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history record check. The facility is not, however, obligated to conduct background checks in other states in which an employee has resided. The definition of "direct care" is being amended, and guidelines are included to assist facilities in determining which employees provide care. The rules are also amended to clarify the status of employees during the waiver process.

- 16) Information and questions regarding these adopted amendments shall be directed to:

Paul Thompson  
Division of Legal Services  
Department of Public Health  
535 West Jefferson, Fifth Floor  
Springfield, Illinois 62761  
217/782-2043  
e-mail: rules@idph.state.il.us

The full text of the adopted amendments begins on the next page:

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TITLE 77: PUBLIC HEALTH  
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH  
SUBCHAPTER c: LONG-TERM CARE FACILITIES

## PART 370

## COMMUNITY LIVING FACILITIES CODE

## SUBPART A: GENERAL PROVISIONS

Section	
370.110	General Requirements
370.120	Application for License
370.130	Licensee
370.140	Issuance of an Initial License for a New Facility
370.150	Issuance of an Initial License Due to a Change of Ownership
370.160	Issuance of a Renewal License
370.165	Alzheimer's Special Care Disclosure
370.170	Denial or Revocation
370.180	Experimental Program Conflicting With Requirements
370.190	Inspections
370.200	Information to Be Made Available to the Public By the Licensee
370.210	Ownership Disclosure
370.220	Variances
370.230	Alcoholism Treatment Programs In Community Living Facilities
370.240	Definitions

## SUBPART B: ADMINISTRATION

Section	
370.400	Administration

## SUBPART C: POLICIES

Section	
370.510	Social and Vocational Training Program Policies
370.520	Admission and Discharge Policies
370.530	Agreement Between Resident and Facility
370.540	General Policies
370.550	Personnel Policies

## SUBPART D: PERSONNEL

Section	
370.710	Personnel
370.715	Health Care Worker Background Check
370.720	Personnel Policies

## SUBPART E: HEALTH MAINTENANCE SERVICES

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Medical Care Policies  
Communicable Disease Policies  
Behavior Emergencies  
Medication Policies

## SUBPART F: PROGRAM SERVICES

Section  
370.1610 Program Evaluation  
370.1620 Program and Services

## SUBPART G: RECORDS

Section  
370.1210 General  
370.1220 Other Records  
370.1230 Confidentiality

## SUBPART H: FOOD SERVICE

Section  
370.1410 Food Service  
370.1420 Adequacy of Diet  
370.1430 Therapeutic Diets  
370.1440 Scheduling of Meals  
370.1450 Food Preparation and Service  
370.1460 Food Handling Sanitation  
370.1470 Kitchen Equipment, Utensils and Supplies

## SUBPART I: MAINTENANCE, HOUSEKEEPING AND LAUNDRY

Section  
370.1610 Maintenance  
370.1620 Housekeeping  
370.1630 Laundry Services

## SUBPART J: FURNISHINGS, EQUIPMENT AND SUPPLIES

Section  
370.1810 Furnishings  
370.1820 Equipment and Supplies

## SUBPART K: WATER SUPPLY AND SEWAGE DISPOSAL

Section  
370.2010 Codes  
370.2020 Water Supply

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370.2030 Sewage Disposal  
370.2040 Plumbing

## SUBPART L: DESIGN AND CONSTRUCTION STANDARDS FOR NEW COMMUNITY LIVING FACILITIES

Section  
370.2210 Applicability of Standards  
370.2220 Codes and Standards  
370.2230 Preparation of Drawings and Specifications  
370.2240 Site  
370.2250 Administration  
370.2260 Bedrooms  
370.2270 Nurses' Station  
370.2280 Bath and Toilet Rooms  
370.2290 Living, Dining Room, and Activity Room(s)  
370.2300 Kitchen  
370.2310 Laundry Room  
370.2320 Housekeeping and Storage  
370.2330 Building General  
370.2340 Exit Facilities and Subdivision of Floor Areas  
370.2350 Stairways and Vertical Openings  
370.2360 Hazardous Areas  
370.2370 Structural  
370.2380 Mechanical Systems  
370.2390 Plumbing Systems  
370.2400 Electrical Systems  
370.2410 Fire Alarm and Detection System  
370.2420 Emergency Electrical System  
370.2430 Fire Protection

## SUBPART M: DESIGN AND CONSTRUCTION STANDARDS FOR EXISTING COMMUNITY LIVING FACILITIES

Section  
370.2610 Applicability of Standards  
370.2620 Codes and Standards  
370.2630 Preparation of Drawings and Specifications  
370.2640 Site  
370.2650 Administration and Public Areas  
370.2660 Bedrooms  
370.2670 Nurses' Station  
370.2680 Bath and Toilet Rooms  
370.2690 Living, Dining Room, and Activity Room(s)  
370.2700 Kitchen  
370.2710 Laundry Room  
370.2720 Housekeeping and Storage  
370.2730 Building General



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370.2740 Exit Facilities and Subdivision of Floor Areas  
370.2750 Stairways and Vertical Openings  
370.2760 Hazardous Areas  
370.2770 Structural  
370.2780 Mechanical Systems  
370.2790 Plumbing Systems  
370.2800 Electrical Systems  
370.2810 Fire Alarm and Detection System  
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SUBPART N: RESIDENT'S RIGHTS

Section  
370.3010 General  
370.3020 Medical and Personal Care Program  
370.3030 Restraints  
370.3040 Abuse and Neglect  
370.3050 Communication and Visitation  
370.3060 Resident's Funds  
370.3070 Private Right of Action  
370.3080 Transfer and/or Discharge  
370.3090 Complaint Procedures  
370.3100 Confidentiality  
370.3110 Facility Implementation

APPENDIX A Program Standards  
APPENDIX B Sanitizing Solutions

AUTHORITY: Implementing and authorized by the Community Living Facilities Act [210 ILCS 35].

SOURCE: Emergency rules adopted at 6 Ill. Reg. 379, effective January 1, 1982, for a maximum of 150 days; adopted at 6 Ill. Reg. 6226, effective May 19, 1982; codified at 8 Ill. Reg. 19476; amended at 8 Ill. Reg. 24706, effective December 7, 1984; emergency amendment at 17 Ill. Reg. 9117, effective June 7, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 19509, effective November 1, 1993; emergency amendments at 20 Ill. Reg. 456, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 9982, effective July 15, 1996; amended at 22 Ill. Reg. 3919, effective February 13, 1998; amended at 23 Ill. Reg. 993, effective January 15, 1999; amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART D: PERSONNEL

Section 370.715 Health Care Worker Background Check

a) The facility shall not knowingly hire any individual in a position

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with duties involving direct care for residents if that person has been convicted of committing or attempting to commit one or more of the following offenses (Section 25(a) of the Health Care Worker Background Check Act [225 ILCS 46/25]):

- 1) Solicitation of murder, solicitation of murder for hire (Sections 8-1.1 and 8-1.2 of the Criminal Code of 1961 [720 ILCS 5/8-1.1 and 8-1.2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 8-1.1 and 8-1.2));
- 2) Murder, homicide, manslaughter or concealment of a homicidal death (Sections 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3 of the Criminal Code of 1961 [720 ILCS 5/9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2 and 9-3.3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3); Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 3, 236, 358, 360, 361, 362, 363, 364, 364a, 365, 370, 373, 373a, 417, and 474));
- 3) Kidnaping or child abduction (Sections 10-1, 10-2, 10-5 and 10-7 of the Criminal Code of 1961 [720 ILCS 5/10-1, 10-2, 10-5, and 10-7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-1, 10-2, 10-5, and 10-7); Ill. Rev. Stat. 1985, ch. 38, par. 10-6; Ill. Rev. Stat. 1961, ch. 38, pars. 384 to 386));
- 4) Unlawful restraint or forcible detention (Sections 10-3, 10-3.1, and 10-4 of the Criminal Code of 1961 [720 ILCS 5/10-3, 10-3.1, and 10-4] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-3, 10-3.1, and 10-4); Ill. Rev. Stat. 1961, ch. 38, pars. 252, 252.1, and 252.4));
- 5) Indecent solicitation of a child, sexual exploitation of a child, exploitation of a child, child pornography (Sections 11-6, 11-9.1, 11-19.2, and 11-20.1 of the Criminal Code of 1961 [720 ILCS 5/11-6, 11-9.1, 11-19.2 and 11-20.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-6, 11-19.2 and 11-20.1; Ill. Rev. Stat. 1983, ch. 38, par. 11-20a; Ill. Rev. Stat. 1961, ch. 38, pars. 103 and 104));
- 6) Assault, battery or infliction of great bodily harm (Sections 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7 of the Criminal Code of 1961 [720 ILCS 5/12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7); Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 55, 56, and 56a to 60b));
- 7) Aggravated stalking (Section 12-7.4 of the Criminal Code of 1961 [720 ILCS 5/12-7.4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-7.4));
- 8) Home invasion (Section 12-11 of the Criminal Code of 1961 [720 ILCS 5/12-11] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-11));

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- 9) Sexual assault or sexual abuse (Sections 12-13, 12-14, 12-14.1, 12-15, and 12-16 of the Criminal Code of 1961 [720 ILCS 5/12-13, 12-14, 12-14.1, 12-15, and 12-16] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-1, 11-2, 11-3, 11-4, 11-5, 12-13, 12-14, 12-15, and 12-16; Ill. Rev. Stat. 1985, ch. 38, pars. 11-1, 11-4, and 11-4.1; Ill. Rev. Stat. 1961, ch. 38, pars. 109, 141, 142, 490, and 491));
- 10) Abuse or gross neglect of a long-term care facility resident (Section 12-19 of the Criminal Code of 1961 [720 ILCS 5/12-19] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-19));
- 11) Criminal neglect of an elderly or disabled person (Section 12-21 of the Criminal Code of 1961 [720 ILCS 5/12-21] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-21));
- 12) Endangering the life or health of a child (Section 12-21.6 of the Criminal Code of 1961 [720 ILCS 5/12-21.6] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354; Ill. Rev. Stat. 1961, ch. 38, par. 95));
- 13) Ritual mutilation, ritualized abuse of a child (Sections 12-32 and 12-33 of the Criminal Code of 1961 [720 ILCS 5/12-32 and 12-33] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-32 and 12-33));
- 14) Theft, retail theft (Sections 16-1 and 16A-3 of the Criminal Code of 1961 [720 ILCS 5/16-1 and 16A-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 16-1 and 16A-3; Ill. Rev. Stat. 1961, ch. 38, pars. 62, 207 to 218, 240 to 244, 246, 253, 254.1, 258, 262, 262a, 273, 290, 291, 301a, 354, 387 to 388, 389, 393 to 400, 404a to 404c, 438, 492 to 496));
- 15) Financial exploitation of an elderly or disabled person (Section 16-1.3 of the Criminal Code of 1961 [720 ILCS 5/16-1.3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 16-1.3));
- 16) Forgery (Section 17-3 of the Criminal Code of 1961 [720 ILCS 5/17-3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 17-3; Ill. Rev. Stat. 1961, ch. 38, pars. 151 and 277 to 286));
- 17) Robbery, armed robbery (Sections 18-1 and 18-2 of the Criminal Code of 1961 [720 ILCS 5/18-1 and 18-2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 18-1 and 18-2));
- 18) Vehicular hijacking, aggravated vehicular hijacking, aggravated robbery (Sections 18-3, 18-4, and 18-5 of the Criminal Code of 1961 [720 ILCS 5/18-3, 18-4, and 18-5]);
- 19) Burglary, residential burglary (Sections 19-1 and 19-3 of the Criminal Code of 1961 [720 ILCS 5/19-1 and 19-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 19-1 and 19-3; Ill. Rev. Stat. 1961, ch. 38, pars. 84 to 86, 88, and 501));
- 20) Criminal trespass to a residence (Section 19-4 of the Criminal Code of 1961 [720 ILCS 5/19-4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 19-4));
- 21) Arson (Sections 20-1 and 20-1.1 of the Criminal Code of 1961 [720 ILCS 5/20-1 and 20-1.1] (formerly Ill. Rev. Stat. 1991, ch. 38,

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- 22) Unlawful use of weapons, aggravated discharge of a firearm, or reckless discharge of a firearm (Sections 24-1, 24-1.2, and 24-1.5 of the Criminal Code of 1961 [720 ILCS 5/24-1, 24-1.2, and 24-1.5] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 24-1 and 24-1.2; Ill. Rev. Stat. 1961, ch. 38, pars. 152, 152a, 155, 155a to 158b, 414a to 414c, 414e and 414g));
  - 23) Armed violence - elements of the offense (Section 33A-2 of the Criminal Code of 1961 [720 ILCS 5/33A-2] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 33A-2));
  - 24) Those provided in Section 4 of the Wrongs to Children Act (Section 4 of the Wrongs to Children Act [720 ILCS 150/4] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354));
  - 25) Cruelty to children (Section 53 of the Criminal Jurisprudence Act [720 ILCS 115/53] (formerly Ill. Rev. Stat. 1991, ch. 234, par. 2368));
  - 26) Manufacture, delivery or trafficking of cannabis, delivery of cannabis on school grounds, or delivery to person under 18, violation by person under 18 (Sections 5, 5.1, 5.2, 7, and 9 of the Cannabis Control Act [720 ILCS 550/5, 5.1 and 9] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 705.1, 705.2, 707, and 709)); or
  - 27) Manufacture, delivery or trafficking of controlled substances (Sections 401, 401.1, 404, 405, 405.1, 407 and 407.1 of the Illinois Controlled Substance Act [720 ILCS 570/401, 401.1, 404, 405, 405.1, 407 and 407.1] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 1401, 1401.1, 1404, 1405, 1405.1, 1407, and 1407.1)).
- b) The facility shall not knowingly employ or retain any individual in a position with duties involving direct care for residents if that person has been convicted of committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) of this Section unless the applicant, employee or employer obtains a waiver pursuant to subsections (m) (k) and (o) (m) of this Section. (Section 25(a) of the Health Care Worker Background Check Act)
- c) A facility shall not hire, employ, or retain any individual in a position with duties involving direct care of residents if the facility becomes aware that the individual has been convicted in another state of committing or attempting to commit an offense that has the same or similar elements as an offense listed in subsections (a)(1) to (27) of this Section, as verified by court records, records from a State agency, or an FBI criminal history record check. This shall not be construed to mean that a facility has an obligation to conduct a criminal history records check in other states in which an employee has resided. (Section 25(b) of the Act)
- d) For the purpose of this Section:
- 1) "Applicant" means an individual seeking employment with a facility who has received a bona fide conditional offer of

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employment.

- 2) "Conditional offer of employment" means a bona fide offer of employment by a facility to an applicant, which is contingent upon the receipt of a report from the Department of State Police indicating that the applicant does not have a record of conviction of any of the criminal offenses listed in subsections (a)(1) to (27) of this Section.
- 3) "Direct care" means the provision of nursing care or assistance with feeding, meals, dressing, movement, bathing, or other personal needs, or maintenance, or general supervision, and oversight of the physical and mental well-being of an individual who is incapable of managing his or her person, whether or not a guardian has been appointed for that individual.
- 4) "Initiate" means the obtaining of the authorization for a record check from a student, applicant, or employee. (Section 15 of the Health Care Worker Background Check Act)

e) For purposes of the Health Care Worker Background Check Act, the facility shall establish a policy defining which employees provide direct care. In making this determination the facility shall consider the following:

- 1) The employee's assigned job responsibilities as set forth in the employee's job description;
- 2) Whether the employee is required to or has the opportunity to be alone with residents, with the exception of infrequent or unusual occasions; and

3) Whether the employee's responsibilities include physical contact with residents, for example to provide therapy or to draw blood.

f) Beginning January 1, 1996, when the facility makes a conditional offer of employment to an applicant who is not exempt under subsection (s) of this Section, for a position with duties that involve direct care for residents, the employer must initiate or have initiated on its behalf a Uniform Conviction Information Act (UCIA) criminal history record check for that applicant. (Section 30(c) of the Health Care Worker Background Check Act) If the applicant is on the Department's Nurse Aide Registry in good standing and has had a UCIA criminal history record check within the last 12 months, the employer need not initiate another check.

g) The facility shall transmit all necessary information and fees to the Illinois State Police within 10 working days after receipt of the authorization. (Section 15 of the Health Care Worker Background Check Act)

h) The facility may accept an authentic UCIA criminal history record check that has been conducted within the last 12 months rather than initiating a check as required in subsection (f) of this Section.

i) The request for a UCIA criminal history record check shall be made as prescribed by the Department of State Police. The applicant or employee must be notified of the following whenever a non-fingerprint-based UCIA criminal history record check is made:

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- 1) That the facility shall request or have requested on its behalf a non-fingerprint-based UCIA criminal history record check pursuant to the Health Care Worker Background Check Act.
  - 2) That the applicant or employee has a right to obtain a copy of the criminal records report from the facility, challenge the accuracy and completeness of the report, and request a waiver in accordance with subsection (m) of this Section.
  - 3) That the applicant, if hired conditionally, may be terminated if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the applicant's identity is validated and it is determined that the applicant or employee does not have a disqualifying criminal history record based on a fingerprint-based records check pursuant to subsection (k) of this Section.
  - 4) That the applicant, if not hired conditionally, shall not be hired if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the applicant's record is cleared based on a fingerprint-based records check pursuant to subsection (k) of this Section.
  - 5) That the employee may be terminated if the criminal records report indicates that the employee has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the employee's record is cleared based on a fingerprint-based records check pursuant to subsection (k) of this Section. (Section 30(e) and (f) of the Health Care Worker Background Check Act)
- j) A facility may conditionally employ an applicant to provide direct care for up to three months pending the results of a UCIA criminal history record check. (Section 30(g) of the Health Care Worker Background Check Act)
- k) An applicant or employee whose non-fingerprint-based UCIA criminal history record check indicates a conviction for committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) of this Section may request that the facility or its designee commence a fingerprint-based UCIA criminal records check by submitting any necessary fees and information in a form and manner prescribed by the Department of State Police. (Section 35 of the Health Care Worker Background Check Act)
- l) A facility having actual knowledge from a source other than a non-fingerprint check that an employee has been convicted of committing or attempting to commit one of the offenses enumerated in Section 25 of the Act must initiate a fingerprint-based background check within 10 working days after acquiring that knowledge. The facility may continue to employ that individual in a direct care position, may reassign that individual to a non-direct care position,



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or may suspend the individual until the results of the fingerprint-based background check are received. (Section 30(d) of the Health Care Worker Background Check Act)

mk) An applicant, employee or employer may request a waiver to subsection (a), or (b) or (c) of this Section by submitting the following to the Department within five working days after the receipt of the criminal records report:

1) A completed fingerprint-based UCIA criminal records check form (Section 40(a) of the Health Care Worker Background Check Act) (which the Department will forward to the Illinois State Police); and

2) A certified check, money order or facility check made payable to the Department of State Police for the amount of money necessary to initiate a fingerprint-based UCIA criminal records check.

nl) The Department may accept the results of the fingerprint-based UCIA criminal records check instead of the items required by subsections (m)(1) and (2) above.

om) The Department may grant a waiver based on mitigating circumstances, which may include:

- 1) The age of the individual at which the crime was committed;
- 2) The circumstances surrounding the crime;
- 3) The length of time since the conviction;
- 4) The applicant's or employee's criminal history since the conviction;
- 5) The applicant's or employee's work history;
- 6) The applicant's or employee's current employment references;
- 7) The applicant's or employee's character references;
- 8) Nurse Aide Registry records; and
- 9) Other evidence demonstrating the ability of the applicant or employee to perform the employment responsibilities competently and evidence that the applicant or employee does not pose a threat to the health or safety of residents. (Section 40(b) of the Health Care Worker Background Check Act)

pn) An individual shall not be employed in a direct care position from the time that the employer receives the results of a non-fingerprint check containing disqualifying conditions until the time that the individual receives a waiver from the Department. If the individual challenges the results of the non-fingerprint check, the employer may continue to employ the individual in a direct care position if the individual presents convincing evidence to the employer that the non-fingerprint check is invalid. If the individual challenges the results of the non-fingerprint check, his or her identity shall be validated by a fingerprint-based records check in accordance with subsection (k) of this Section. ~~An individual may not be employed in a direct-care position during the pendency of a waiver request.~~ (Section 40(d) of the Health Care Worker Background Check Act)

go) A facility is not obligated to employ or offer permanent employment to an applicant, or to retain an employee who is granted a waiver.

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(Section 40(f) of the Health Care Worker Background Check Act)  
fp) A facility may retain the individual in a direct care position if the individual presents clear and convincing evidence to the facility that the non-fingerprint-based criminal records report is invalid and if there is a good faith belief on the part of the employer that the individual did not commit an offense listed in subsections (a)(1) to (27) of this Section, pending positive verification through a fingerprint-based criminal records check. Such evidence may include, but not be limited to:

- 1) certified court records;
- 2) written verification from the State's Attorney's office that prosecuted the conviction at issue;
- 3) written verification of employment during the time period during which the crime was committed or during the incarceration period stated in the report;
- 4) a signed affidavit from the individual concerning the validity of the report; or
- 5) documentation from a local law enforcement agency that the individual was not convicted of a disqualifying crime.

sq) This Section shall not apply to:

- 1) An individual who is licensed by the Department of Professional Regulation or the Department of Public Health under another law of this State;
- 2) An individual employed or retained by a health care employer for whom a criminal background check is required by another law of this State; or
- 3) A student in a licensed health care field including, but not limited to, a student nurse, a physical therapy student, or a respiratory care student unless he or she is employed by a health care employer in a position with duties involving direct care for residents. (Section 20 of the Health Care Worker Background Check Act)

tr) An employer need not initiate an additional criminal background check for an employee if the employer initiated a criminal background check for the employee after January 1, 1996 and prior to January 1, 1998. This subsection applies only to persons employed prior to January 1, 1998. Any person newly employed on or after January 1, 1998 must receive a background check as required by Section 30 of the Health Care Worker Background Check Act. (Section 25.1 of the Health Care Worker Background Check Act)

us) The facility shall send a copy of the results of the UCIA criminal history record check to the State Nurse Aide Registry for those individuals who are on the Registry. (Section 30(b) of the Health Care Worker Background Check Act) The facility shall include the individual's Social Security number on the criminal history record check results.

vt) The facility shall retain on file for a period of 5 years records of criminal records requests for all employees. The facility shall

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retain the results of the UCIA criminal history records check and waiver, if appropriate, for the duration of the individual's employment. The files shall be subject to inspection by the Department. A fine of \$500 shall be imposed for failure to maintain these records. (Section 50 of the Health Care Worker Background Check Act)

(u) The facility shall maintain a copy of the employee's criminal history record check results and waiver, if applicable, in the personnel file or other secure location accessible to the Department.

(Source: Amended at 24 Ill. Reg. 1.1.1, effective )

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- 1) Heading of the Part: Hospital Licensing Requirements
- 2) Code Citation: 77 Ill. Adm. Code 250
- 3) Section Numbers: 250.435  
Adopted Action: Amendment
- 4) Statutory Authority: Hospital Licensing Act [20 ILCS 85]
- 5) Effective Date of Rulemaking: November 1, 2000
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal Published in Illinois Register: March 17, 2000 - 24 Ill. Reg. 4102

10) Has JCAR issued a Statement of Objection to these amendments? No

11) Differences between proposal and final version: The following changes were made in response to comments received during the first notice or public comment period: No changes were made during the first notice period.

In addition, various typographical, grammatical and form changes were made in response to the comments from JCAR.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? No changes were requested by JCAR.

13) Will this rulemaking replace an emergency rulemaking currently in effect?  
No

14) Are there any amendments pending on this Part? Yes

Section Numbers	Adopted Action	Illinois Register Citation
250.2420	Amendment	24 Ill. Reg. 12405
250.2430	Amendment	24 Ill. Reg. 12405
250.2440	Amendment	24 Ill. Reg. 12405
250.2460	Amendment	24 Ill. Reg. 12405

15) Summary and Purpose of Rulemaking: The rules in Part 250 regulate the

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licensure of hospitals in Illinois. Section 250.435 (Health Care Worker Background Check) is amended to implement P.A. 91-598 (effective January 1, 2000). A hospital will be prohibited from hiring, employing or retaining a person with direct care duties if the hospital becomes aware that the individual has been convicted in another state of committing or attempting to commit an offense that has the same or similar elements as a disqualifying crime under the Health Care Worker Background Check Act, as verified by court, records from a State agency, or an FBI criminal history record check. The hospital is not, however, obligated to conduct background checks in other states in which an employee has resided. The definition of "direct care" is amended, and guidelines are included to assist hospitals in determining which employees provide direct care. The rules are also amended to clarify the status of employees during the waiver process.

16) Information and questions regarding this adopted amendment shall be directed to:

Paul Thompson  
Division of Legal Services  
Department of Public Health  
535 West Jefferson, Fifth Floor  
Springfield, Illinois 62761  
217/782-2043  
e-mail: rules@idph.state.il.us

The full text of the adopted amendment begins on the next page:

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## TITLE 77: PUBLIC HEALTH

## CHAPTER I: DEPARTMENT OF PUBLIC HEALTH

## SUBCHAPTER b: HOSPITALS AND AMBULATORY CARE FACILITIES

## PART 250

## HOSPITAL LICENSING REQUIREMENTS

## SUBPART A: GENERAL

Section  
250.110  
250.120  
250.130  
250.140  
250.150  
250.160

Application for and Issuance of Permit to Establish a Hospital  
Application for and Issuance of a License to Operate a Hospital  
Administration by the Department  
Hearings  
Definitions  
Incorporated and Referenced Materials

## SUBPART B: ADMINISTRATION AND PLANNING

Section  
250.210  
250.220  
250.230  
250.240  
250.250  
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250.270  
250.280

The Governing Board  
Accounting  
Planning  
Admission and Discharge  
Visiting Rules  
Patients' Rights  
Language Assistance Services  
Manuals of Procedure  
Agreement with Designated Organ Procurement Agencies

## SUBPART C: THE MEDICAL STAFF

Section  
250.310  
250.315  
250.320  
250.330  
250.340

Organization  
House Staff Members  
Admission and Supervision of Patients  
Orders for Medications and Treatments  
Availability for Emergencies

## SUBPART D: PERSONNEL SERVICE

Section  
250.410  
250.420  
250.430  
250.435  
250.440  
250.450

Organization  
Personnel Records  
Duty Assignments  
Health Care Worker Background Check  
Education Programs  
Personnel Health Requirements



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## Benefits

250.460

## SUBPART E: LABORATORY

## Section

250.510 Laboratory Services  
 250.520 Blood and Blood Components  
 250.525 Designated Blood Donor Program  
 250.530 Proficiency Survey Program (Repealed)  
 250.540 Laboratory Personnel (Repealed)  
 250.550 Western Blot Assay Testing Procedures (Repealed)

## SUBPART F: RADIOLOGICAL SERVICES

## Section

250.610 General Diagnostic Procedures and Treatments  
 250.620 Radioactive Isotopes  
 250.630 General Policies and Procedures Manual

## SUBPART G: GENERAL HOSPITAL EMERGENCY SERVICE

## Section

250.710 Classification of Emergency Services  
 250.720 General Requirements  
 250.725 Notification of Emergency Personnel  
 250.730 Community or Area-wide Planning  
 250.740 Disaster and Mass Casualty Program  
 250.750 Emergency Services for Sexual Assault Victims

## SUBPART H: RESTORATIVE AND REHABILITATION SERVICES

## Section

250.810 Applicability of Other Parts of These Requirements  
 250.820 General  
 250.830 Classifications of Restorative and Rehabilitation Services  
 250.840 General Requirements for all Classifications  
 250.850 Specific Requirements for Comprehensive Physical Rehabilitation Services

250.860 Medical Direction

250.870 Nursing Care

250.880 Additional Allied Health Services

## SUBPART I: NURSING SERVICE AND ADMINISTRATION

## Section

250.910 Nursing Services  
 250.920 Organizational Plan  
 250.930 Role in hospital planning

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250.940

Job descriptions

250.950

Nursing committees

250.960

Specialized nursing services

250.970

Nursing Care Plans

250.980

Nursing Records and Reports

250.990

Unusual Incidents

250.1000

Meetings

250.1010

Education Programs

250.1020

Licensure

250.1030

Policies and Procedures

250.1040

Patient Care Units

250.1050

Equipment for Bedside Care

250.1060

Drug Services on Patient Unit

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Care of Patients

250.1075

Use of Restraints

250.1080

Admission Procedures Affecting Care

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Sterilization and Processing of Supplies

250.1100

Infection Control

## SUBPART J: SURGICAL AND RECOVERY ROOM SERVICES

## Section

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Surgery

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Surgery Staff

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Policies &amp; Procedures

250.1240

Surgical Privileges

250.1250

Surgical Emergency Care

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Operating Room Register and Records

250.1270

Surgical Patients

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Equipment

250.1290

Safety

250.1300

Operating Room

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Visitors in Operating Room

50.1310

Cleaning of Operating Room

250.1320

Postoperative Recovery Facilities

## SUBPART K: ANESTHESIA SERVICES

## Section

250.1410

Anesthesia Service

## SUBPART L: RECORDS AND REPORTS

## Section

250.1510

Medical Records

250.1520

Reports

## SUBPART M: FOOD SERVICE

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250.1610 Dietary Department Administration  
250.1620 Facilities  
250.1630 Menus and Nutritional Adequacy  
250.1640 Diet Orders  
250.1650 Frequency of Meals  
250.1660 Therapeutic (Modified) Diets  
250.1670 Food Preparation and Service  
250.1680 Sanitation

SUBPART N: HOUSEKEEPING AND LAUNDRY SERVICES

Section  
250.1710 Housekeeping  
250.1720 Garbage, Refuse and Solid Waste Handling and Disposal  
250.1730 Insect and Rodent Control  
250.1740 Laundry Service  
250.1750 Soiled Linen  
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SUBPART O: MATERNITY AND NEONATAL SERVICE

Section  
250.1810 Applicability of other Parts of these regulations  
250.1820 Maternity and Neonatal Service (Perinatal Service)  
250.1830 General Requirements for all Maternity Departments  
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250.1850 Rooming-In Care of Mother and Infant  
250.1860 Special Programs  
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SUBPART P: ENGINEERING AND MAINTENANCE OF THE PHYSICAL  
PLANT, SITE, EQUIPMENT, AND SYSTEMS--HEATING,  
COOLING, ELECTRICAL, VENTILATION, PLUMBING,  
WATER, SEWER, AND SOLID WASTE DISPOSAL

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250.1910 Maintenance  
250.1920 Emergency electric service  
250.1930 Water Supply  
250.1940 Ventilation, Heating, Air Conditioning, and Air Changing Systems  
250.1950 Grounds and Buildings Shall be Maintained  
250.1960 Sewage, Garbage, Solid Waste Handling and Disposal  
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250.2020 Requirements  
  
SUBPART R: PHARMACY OR DRUG AND MEDICINE SERVICE  
  
Section  
250.2110 Service Requirements  
250.2120 Personnel Required  
250.2130 Facilities for Services  
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SUBPART S: PSYCHIATRIC SERVICES

Section  
250.2210 Applicability of other Parts of these Regulations  
250.2220 Establishment of a Psychiatric Service  
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250.2240 Nursing Service  
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250.2260 Staff and Personnel Development and Training  
250.2270 Admission, Transfer and Discharge Procedures  
250.2280 Care of Patients  
250.2290 Special Medical Record Requirements for Psychiatric Hospitals and Psychiatric Units of General Hospitals or General Hospitals Providing Psychiatric Care  
250.2300 Diagnostic, Treatment and Physical Facilities and Services

SUBPART T: DESIGN AND CONSTRUCTION STANDARDS

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250.2410 Applicability of these Standards  
250.2420 Submission of Plans for New Construction, Alterations or Additions to Existing Facility  
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250.2610 Applicability of these Standards

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250.2620 Codes and Standards  
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SUBPART V: SPECIAL CARE AND SPECIAL SERVICE UNITS

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## SUBPART W: ALCOHOLISM AND INTOXICATION TREATMENT SERVICES

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250.2820 Establishment of an Alcoholism and Intoxication Treatment Service  
250.2830 Classification and Definitions of Service and Programs  
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250.2850 The Medical and Professional Staff  
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EXHIBIT A Codes (Repealed)  
EXHIBIT B Standards (Repealed)  
EXHIBIT C Addresses of Sources (Repealed)  
TABLE A Measurements Essential for Level I, II, III Hospitals  
TABLE B Sound Transmission Limitations in General Hospitals  
TABLE C Filter Efficiencies for Central Ventilation and Air Conditioning Systems in General Hospitals (Repealed)  
TABLE D General Pressure Relationships and Ventilation of Certain Hospital Areas (Repealed)  
TABLE E Piping Locations for Oxygen, Vacuum and Medical Compressed Air  
TABLE F General Pressure Relationships and Ventilation of Certain Hospital Areas  
TABLE G Insulation/Building Perimeter

AUTHORITY: Implementing and authorized by the Hospital Licensing Act [210 ILCS 85].

SOURCE: Rules repealed and new rules adopted August 27, 1978; emergency amendment at 2 Ill. Reg. 31, p. 73, effective July 24, 1978, for a maximum of

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150 days; amended at 2 Ill. Reg. 21, p. 49, effective May 16, 1978; emergency amendment at 2 Ill. Reg. 31, p. 73, effective July 24, 1978, for a maximum of 150 days; amended at 2 Ill. Reg. 45, p. 85, effective November 6, 1978; amended at 3 Ill. Reg. 17, p. 88, effective April 22, 1979; amended at 4 Ill. Reg. 22, p. 233, effective May 20, 1980; amended at 4 Ill. Reg. 25, p. 138, effective June 6, 1980; amended at 5 Ill. Reg. 507, effective December 29, 1980; amended at 6 Ill. Reg. 575, effective December 30, 1981; amended at 6 Ill. Reg. 1655, effective January 27, 1982; amended at 6 Ill. Reg. 3296, effective March 15, 1982; amended at 6 Ill. Reg. 7835 and 7838, effective June 17, 1982; amended at 7 Ill. Reg. 962, effective January 6, 1983; amended at 7 Ill. Reg. 5218 and 5221, effective April 4, 1983 and April 5, 1983; amended at 7 Ill. Reg. 6964, effective May 17, 1983; amended at 7 Ill. Reg. 8546, effective July 12, 1983; amended at 7 Ill. Reg. 9610, effective August 2, 1983; codified at 8 Ill. Reg. 19752; amended at 8 Ill. Reg. 24148, effective November 29, 1984; amended at 9 Ill. Reg. 4802, effective April 1, 1985; amended at 10 Ill. Reg. 11931, effective September 1, 1986; amended at 11 Ill. Reg. 10283, effective July 1, 1987; amended at 11 Ill. Reg. 10642, effective July 1, 1987; amended at 12 Ill. Reg. 15080, effective October 1, 1988; amended at 12 Ill. Reg. 16760, effective October 1, 1988; amended at 13 Ill. Reg. 13232, effective September 1, 1989; amended at 14 Ill. Reg. 2342, effective February 15, 1990; amended at 14 Ill. Reg. 13824, effective September 1, 1990; amended at 15 Ill. Reg. 5328, effective May 1, 1991; amended at 15 Ill. Reg. 13811, effective October 1, 1991; amended at 17 Ill. Reg. 1614, effective January 25, 1993; amended at 17 Ill. Reg. 17225, effective October 1, 1993; amended at 18 Ill. Reg. 11945, effective July 22, 1994; amended at 18 Ill. Reg. 15390, effective October 10, 1994; amended at 19 Ill. Reg. 13355, effective September 15, 1995; emergency amendment at 20 Ill. Reg. 474, effective January 1, 1996, for a maximum of 150 days; emergency expired on May 29, 1996; amended at 20 Ill. Reg. 3234, effective February 15, 1996; amended at 20 Ill. Reg. 10009, effective July 15, 1996; amended at 22 Ill. Reg. 3932, effective February 13, 1998; amended at 22 Ill. Reg. 9342, effective May 20, 1998; amended at 23 Ill. Reg. 1007, effective January 15, 1999; emergency amendment at 23 Ill. Reg. 3508, effective March 4, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 9513, effective August 1, 1999; amended at 23 Ill. Reg. 13913, effective November 15, 1999; amended at 24 Ill. Reg. 6572, effective April 11, 2000; amended at 24 Ill. Reg. 1714, effective \_\_\_\_\_.

## SUBPART D: PERSONNEL SERVICE

## Section 250.435 Health Care Worker Background Check

- a) The hospital shall not knowingly hire any individual in a position with duties involving direct care for patients if that person has been convicted of committing or attempting to commit one or more of the following offenses (Section 25(a) of the Health Care Worker Background Check Act [225 ILCS 46/25]):
- 1) Solicitation of murder, solicitation of murder for hire (Sections 8-1.1 and 8-1.2 of the Criminal Code of 1961 [720 ILCS 5/8-1.1



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- and 8-1.2) (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 8-1.1 and 8-1.2));
- 2) Murder, homicide, manslaughter or concealment of a homicidal death (Sections 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3 of the Criminal Code of 1961 [720 ILCS 5/9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2 and 9-3.3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3); Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 3, 236, 358, 360, 361, 362, 363, 364, 364a, 365, 370, 373, 373a, 417 and 474));
- 3) Kidnapping or child abduction (Sections 10-1, 10-2, 10-5 and 10-7 of the Criminal Code of 1961 [720 ILCS 5/10-1, 10-2, 10-5, and 10-7]; Ill. Rev. Stat. 1985, ch. 38, par. 10-1, 10-2, 10-5, and 10-7; Ill. Rev. Stat. 1961, ch. 38, par. 10-6; Ill. Rev. Stat. 1961, ch. 38, pars. 384 to 386));
- 4) Unlawful restraint or forcible detention (Sections 10-3, 10-3.1, and 10-4 of the Criminal Code of 1961 [720 ILCS 5/10-3, 10-3.1, and 10-4] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-3, 10-3.1, and 10-4); Ill. Rev. Stat. 1961, ch. 38, pars. 252, 252.1, and 252.4));
- 5) Indecent solicitation of a child, sexual exploitation of a child, exploitation of a child, child pornography (Sections 11-6, 11-9.1, 11-19.2, and 11-20.1 of the Criminal Code of 1961 [720 ILCS 5/11-6, 11-9.1, 11-19.2, and 11-20.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-6, 11-19.2, and 11-20.1; Ill. Rev. Stat. 1983, ch. 38, par. 11-20a; Ill. Rev. Stat. 1961, ch. 38, pars. 103 and 104));
- 6) Assault, battery, heinous battery, tampering with food, drugs or cosmetics, or infliction of great bodily harm (Sections 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7 of the Criminal Code of 1961 [720 ILCS 5/12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7); Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 55, 56, and 56a to 60b));
- 7) Aggravated stalking (Section 12-7.4 of the Criminal Code of 1961 [720 ILCS 5/12-7.4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-7.4));
- 8) Home invasion (Section 12-11 of the Criminal Code of 1961 [720 ILCS 5/12-11] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-11));
- 9) Sexual assault or sexual abuse (Sections 12-13, 12-14, 12-14.1, 12-15, and 12-16 of the Criminal Code of 1961 [720 ILCS 5/12-13, 12-14, 12-14.1, 12-15, and 12-16] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-1, 11-2, 11-3, 11-4, 11-5, 12-13, 12-14, 12-15, and 12-16); Ill. Rev. Stat. 1985, ch. 38, pars. 11-1, 11-4, and

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- 11-4.1; Ill. Rev. Stat. 1961, ch. 38, pars. 109, 141, 142, 490, and 491));
- 10) Abuse or gross neglect of a long-term care facility resident (Section 12-19 of the Criminal Code of 1961 [720 ILCS 5/12-19] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-19));
- 11) Criminal neglect of an elderly or disabled person (Section 12-2 of the Criminal Code of 1961 [720 ILCS 5/12-2] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-2));
- 12) Endangering the life or health of a child (Section 12-21.6 of the Criminal Code of 1961 [720 ILCS 5/12-21.6] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354; Ill. Rev. Stat. 1961, ch. 38, par. 95));
- 13) Ritual mutilation, ritualized abuse of a child (Sections 12-33 of the Criminal Code of 1961 [720 ILCS 5/12-33] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-33));
- 14) Theft, retail theft (Sections 16-1 and 16A-3 of the Criminal Code of 1961 [720 ILCS 5/16-1 and 16A-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 16-1 and 16A-3; Ill. Rev. Stat. 1961, ch. 38, pars. 62, 207 to 218, 240 to 244, 246, 253, 254.1, 258, 262a, 273, 290, 291, 301a, 354, 387 to 388b, 389, 393 to 400, 404a to 404c, 438, 492 to 496));
- 15) Financial exploitation of an elderly or disabled person (Section 16-1.3 of the Criminal Code of 1961 [720 ILCS 5/16-1.3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 16-1.3));
- 16) Forgery (Section 17-3 of the Criminal Code of 1961 [720 ILCS 5/17-3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 17-3; Ill. Rev. Stat. 1961, ch. 38, pars. 151 and 277 to 286));
- 17) Robbery, armed robbery (Sections 18-1 and 18-2 of the Criminal Code of 1961 [720 ILCS 5/18-1 and 18-2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 18-1 and 18-2));
- 18) Vehicular hijacking, aggravated vehicular hijacking, aggravated robbery (Sections 18-3, 18-4, and 18-5 of the Criminal Code of 1961 [720 ILCS 5/18-3, 18-4, and 18-5]);
- 19) Burglary, residential burglary (Sections 19-1 and 19-3 of the Criminal Code of 1961 [720 ILCS 5/19-1 and 19-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 19-1 and 19-3; Ill. Rev. Stat. 1961, ch. 38, pars. 84 to 86, 88 and 501));
- 20) Criminal trespass to a residence (Section 19-4 of the Criminal Code of 1961 [720 ILCS 5/19-4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 19-4));
- 21) Arson (Sections 20-1 and 20-1.1 of the Criminal Code of 1961 [720 ILCS 5/20-1 and 20-1.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 20-1 and 20-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 48 to 53 and 236 to 238));
- 22) Unlawful use of weapons, aggravated discharge of a firearm, or reckless discharge of a firearm (Sections 24-1, 24-1.2, and 24-1.5 of the Criminal Code of 1961 [720 ILCS 5/24-1, 24-1.2, and

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- 24-1.5] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 24-1 and 24-1.2; Ill. Rev. Stat. 1961, ch. 38, pars. 152, 152a, 155, 155a to 158b, 414a to 414c, 414e and 414g);
- 23) Armed violence - elements of the offense (Section 33A-2 of the Criminal Code of 1961 [720 ILCS 5/33A-2] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 33A-2));
- 24) Those provided in Section 4 of the Wrongs to Children Act (Section 4 of the Wrongs to Children Act [720 ILCS 150/4] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354));
- 25) Cruelty to children (Section 53 of the Criminal Jurisprudence Act [720 ILCS 115/53] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2368));
- 26) Manufacture, delivery or trafficking of cannabis, delivery of cannabis on school grounds, or delivery to person under 18; violation by person under 18 (Sections 5, 5.1, 5.2, 7, and 9 of the Cannabis Control Act [720 ILCS 550/5, 5.1, 5.2, 7, and 9] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 705, 705.1, 705.2, 707, and 709)); or
- 27) Manufacture, delivery or trafficking of controlled substances (Sections 401, 401.1, 404, 405, 405.1, 407 and 407.1 of the Illinois Controlled Substance Act [720 ILCS 570/401, 401.1, 404, 405, 405.1, 407 and 407.1] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 1401, 1401.1, 1404, 1405, 1405.1, 1407, and 1407.1)).
- b) The hospital shall not knowingly employ or retain any individual in a position with duties involving direct care for patients if that person has been convicted of committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) of this Section unless the applicant, employee, or employer obtains a waiver pursuant to subsections (m)(4) and (o)(4) of this Section. (Section 25(a) of the Health Care Worker Background Check Act)
- c) A hospital shall not hire, employ, or retain any individual in a position with duties involving direct care of patients if the hospital becomes aware that the individual has been convicted in another state of committing or attempting to commit an offense that has the same or similar elements as an offense listed in subsections (a)(1) to (27) of this Section as verified by court records, records from a State agency, or an FBI criminal history record check. This shall not be construed to mean that a hospital has an obligation to conduct a criminal history records check in other states in which an employee has resided. (Section 25(b) of the Act)
- d) For the purpose of this Section:
- 1) "Applicant" means an individual seeking employment with a hospital who has received a bona fide conditional offer of employment.
  - 2) "Conditional offer of employment" means a bona fide offer of employment by a hospital to an applicant, which is contingent upon the receipt of a report from the Department of State Police indicating that the applicant does not have a record of

- conviction of any of the criminal offenses listed in subsections (a)(1) to (27) of this Section.
- 3) "Direct Care" means the provision of nursing care or assistance with feeding, means, dressing, movement, bathing, or other personal needs, or maintenance, or general supervision and oversight of the physical and mental well-being of an individual who is incapable of managing his or her person whether or not a guardian has been appointed for that individual.
- 4) "Initiate" means the obtaining of the authorization for a record check from a student, applicant, or employee. (Section 15 of the Health Care Worker Background Check Act)
- e) For purposes of the Health Care Worker Background Check Act, the hospital shall establish a policy defining which employees provide direct care. In making this determination the hospital shall consider the following:
- 1) The employee's assigned job responsibilities as set forth in the employee's job description;
  - 2) Whether the employee is required to or has the opportunity to be alone with patients, with the exception of infrequent or unusual occasions; and
  - 3) Whether the employee's responsibilities include physical contact with patients, for example to provide therapy or to draw blood.
- f) Beginning January 1, 1996, when the hospital makes a conditional offer of employment to an applicant who is not exempt under subsection (s)(4) of this Section, for a position with duties that involve direct care for patients, the employer must initiate or have initiated on its behalf a Uniform Conviction Information Act (UCIA) criminal history record check for that applicant. (Section 30(c) of the Health Care Worker Background Check Act) If the applicant is on the Department's Nurse Aide Registry in good standing and has had a UCIA criminal history record check within the last 12 months, the employer need not initiate another check.
- g) The hospital shall transmit all necessary information and fees to the Illinois State Police within 10 working days after receipt of the authorization. (Section 15 of the Health Care Worker Background Check Act)
- h) The hospital may accept an authentic UCIA criminal history record check that has been conducted within the last 12 months rather than initiating a check as required in subsection (f)(4) of this Section.
- i) The request for a UCIA criminal history record check shall be made as prescribed by the Department of State Police. The applicant or employee must be notified of the following whenever a non-fingerprint-based UCIA criminal history record check is made:
- 1) That the hospital shall request or have requested on its behalf a non-fingerprint-based UCIA criminal history record check pursuant to the Health Care Worker Background Check Act.
  - 2) That the applicant or employee has a right to obtain a copy of the criminal records report from the hospital, challenge the

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accuracy and completeness of the report, and request a waiver in accordance with subsection (m)(4) of this Section.

3) That the applicant, if hired conditionally, may be terminated if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the applicant's identity is validated and it is determined that the applicant or employee does not have a disqualifying criminal history record based on a fingerprint-based records check pursuant to subsection (k)(4) of this Section.

4) That the applicant, if not hired conditionally, shall not be hired if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the applicant's record is cleared based on a fingerprint-based records check pursuant to subsection (k)(4) of this Section.

5) That the employee may be terminated if the criminal records report indicates that the employee has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the employee's record is cleared based on a fingerprint-based records check pursuant to subsection (k)(4) of this Section. (Section 30(e) and (f) of the Health Care Worker Background Check Act)

l) A hospital may conditionally employ an applicant to provide direct care for up to three months pending the results of a UCIA criminal history record check. (Section 30(g) of the Health Care Worker Background Check Act)

k) An applicant or employee whose non-fingerprint-based UCIA criminal history record check indicates a conviction for committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) of this Section may request that the hospital or its designee commence a fingerprint-based UCIA criminal records check by submitting any necessary fees and information in a form and manner prescribed by the Department of State Police. (Section 35 of the Health Care Worker Background Check Act)

l) A hospital having actual knowledge from a source other than a non-fingerprint check that an employee has been convicted of committing or attempting to commit one of the offenses enumerated in Section 25 of the Act must initiate a fingerprint-based background check within 10 working days after acquiring that knowledge. The hospital may continue to employ that individual in a direct care position, may reassign that individual to a non-direct care position, or may suspend the individual until the results of the fingerprint-based background check are received. (Section 30(d) of the Health Care Worker Background Check Act)

m) An applicant, employee or employer may request a waiver to subsection (a), or (b), or (c) of this Section by submitting the following to the

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Department within five working days after the receipt of the criminal records report:

1) A completed fingerprint-based UCIA criminal records check form (Section 40(a) of the Health Care Worker Background Check Act) (which the Department will forward to the Illinois State Police); and

2) A certified check, money order or hospital check made payable to the Department of State Police for the amount of money necessary to initiate a fingerprint-based UCIA criminal records check.

n) The Department may accept the results of the fingerprint-based UCIA Criminal Records Check instead of the items required by subsections (m)(1) and (2) above. (Section 40(a-5) of the Health Care Worker Background Check Act)

o) The Department may grant a waiver based on mitigating circumstances, which may include:

1) The age of the individual at which the crime was committed;

2) The circumstances surrounding the crime;

3) The length of time since the conviction;

4) The applicant's or employee's criminal history since the conviction;

5) The applicant's or employee's work history;

6) The applicant's or employee's current employment references;

7) The applicant's or employee's character references;

8) Nurse Aide Registry records; and

9) Other evidence demonstrating the ability of the applicant or employee to perform the employment responsibilities competently and evidence that the applicant or employee does not pose a threat to the health or safety of patients. (Section 40(b) of the Health Care Worker Background Check Act)

p) An individual shall not be employed in a direct care position from the time that the employer receives the results of a non-fingerprint check containing disqualifying conditions until the time that the individual receives a waiver from the Department. If the individual challenges the results of the non-fingerprint check, the employer may continue to employ the individual in a direct care position if the individual presents convincing evidence to the employer that the non-fingerprint check is invalid. If the individual challenges the results of the non-fingerprint check, his or her identity shall be validated by a fingerprint-based records check in accordance with subsection (k) of this Section. An individual may not be employed in a direct care position during the pendency of a waiver request.

q) Section 40(d) of the Health Care Worker Background Check Act)

r) A hospital is not obligated to employ or offer permanent employment to an applicant, or to retain an employee who is granted a waiver.

s) Section 40(f) of the Health Care Worker Background Check Act)

t) A hospital may retain the individual in a direct care position if the individual presents clear and convincing evidence to the hospital that the non-fingerprint-based criminal records report is invalid and if



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there is a good faith belief on the part of the employer that the individual did not commit an offense listed in subsections (a)(1) to (27) of this Section, pending positive verification through a fingerprint-based criminal records check. Such evidence may include, but not be limited to:

- 1) certified court records;
- 2) written verification from the State's Attorney's office that prosecuted the conviction at issue;
- 3) written verification of employment during the time period during which the crime was committed or during the incarceration period stated in the report;
- 4) a signed affidavit from the individual concerning the validity of the report; or
- 5) documentation from a local law enforcement agency that the individual was not convicted of a disqualifying crime.

§147 This Section shall not apply to:

- 1) An individual who is licensed by the Department of Professional Regulation or the Department of Public Health under another law of this State; or
- 2) An individual employed or retained by a health care employer for whom a criminal background check is required by another law of this State; or
- 3) A student in a licensed health care field including, but not limited to, a student nurse, a physical therapy student, or a respiratory care student unless he or she is employed by a health care employer in a position with duties involving direct care for patients. (Section 20 of the Health Care Worker Background Check Act) (Section 20 of the Health Care Worker Background Check Act)

1)† An employer need not initiate an additional criminal background check for an employee if the employer initiated a criminal background check for the employee after January 1, 1996 and prior to January 1, 1998. This subsection applies only to persons employed prior to January 1, 1998. Any person newly employed on or after January 1, 1998 must receive a background check as required by Section 30 of the Health Care Worker Background Check Act. (Section 25.1 of the Health Care Worker Background Check Act)

u)† The hospital shall send a copy of the results of the UCIA criminal history record check to the State Nurse Aide Registry for those individuals who are on the Registry. (Section 30(b) of the Health Care Worker Background Check Act) The hospital shall include the individual's Social Security number on the criminal history record check results.

v)† The hospital shall retain on file for a period of 5 years records of criminal records requests for all employees. The hospital shall retain the results of the UCIA criminal history records check and waiver, if appropriate, for the duration of the individual's employment. The files shall be subject to inspection by the Department. A fine of \$500 shall be imposed for failure to maintain these records. (Section

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50 of the Health Care Worker Background Check Act)  
w)† The hospital shall maintain a copy of the employee's criminal history record check results and waiver, if applicable, in the personnel file or other secure location accessible to the Department.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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- 1) Heading of the Part: Illinois Home Health Agency Code
- 2) Code Citation: 77 Ill. Adm. Code 245
- 3) Section Numbers:  
245.70 Adopted Action:  
245.72 Amendment
- 4) Statutory Authority: Home Health Agency Licensing Act [210 ILCS 55]
- 5) Effective date of Amendments: November 1, 2000
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain any incorporations by reference? No
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal was Published in Illinois Register: March 17, 2000 - 24 Ill. Reg. 4119
- 10) Has JCAR issued a Statement of Objection to these amendments? No
- 11) Difference between proposal and final version: The following changes were made in response to comments received during the first notice or public comment period:  
  
In Section 245.72(e)(3), "more than 50 percent of" was deleted.  
  
The following changes were made in response to comments and suggestions of the JCAR:  
  
1. In Section 245.70(a)(1), a period was added before the closing parenthesis.  
  
2. In Section 245.72(p), "10" was stricken and "40" was added.  
  
In addition, various typographical, grammatical and form changes were made in response to the comments from JCAR.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? All agreed-upon changes have been made.
- 13) Will these amendments replace emergency amendments currently in effect? No

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- 14) Are there any other amendments pending on this Part? Yes

<u>Section Numbers</u>	<u>Proposed Action</u>	<u>Ill. Reg. Citation</u>
245.50	Amendment	24 Ill. Reg. 11565
245.70	Amendment	24 Ill. Reg. 11565

- 15) Summary and Purpose of the Amendments: The rules in Part 245 regulate the licensure of home health agencies in Illinois. Section 245.70 (Home Health Aide Training) is amended to revise training and equivalency requirements for home health aides. Agencies shall not employ individuals as home health aides who have not successfully completed a Department-approved training program or met accepted equivalencies.
- Section 245.72 (Health Care Worker Background Check) is being amended to implement P.A. 91-598 (effective January 1, 2000). An agency will be prohibited from hiring, employing or retaining a person with direct care duties if the agency becomes aware that the individual has been convicted in another state of committing or attempting to commit an offense that has the same or similar elements as a disqualifying crime under the Health Care Worker Background Check Act, as verified by court records, records from a State agency, or an FBI criminal history record check. The agency is not, however, obligated to conduct background checks in other states in which an employee has resided. The definition of "direct care" is amended, and guidelines are included to assist agencies in determining which employees provide direct care. The rules are also amended to clarify the status of employees during the waiver process.

- 16) Information and questions regarding these adopted amendments shall be directed to:

Paul Thompson  
Division of Legal Services  
Department of Public Health  
535 West Jefferson, Fifth Floor  
Springfield, Illinois 62761  
217/782-2043  
e-mail: rules@idph.state.il.us

The full text of the adopted amendments begins on the next page:

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TITLE 77: PUBLIC HEALTH  
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH  
SUBCHAPTER b: HOSPITALS AND AMBULATORY CARE FACILITIES

PART 245  
ILLINOIS HOME HEALTH AGENCY CODE  
SUBPART A: GENERAL PROVISIONS

Section	Purpose
245.10	Definitions
245.20	Incorporated and Referenced Materials
245.25	

SUBPART B: OPERATIONAL REQUIREMENTS

Section	Purpose
245.30	Organization and Administration
245.40	Staffing and Staff Responsibilities
245.50	Services
245.60	Annual Financial Statement
245.70	Home Health Aide Training
245.72	Health Care Worker Background Check

SUBPART C: LICENSURE PROCEDURES

Section	Purpose
245.80	Licensure Required
245.90	License Application
245.100	Provisional License
245.110	Inspections and Investigations
245.120	Violations
245.130	Adverse Licensure Actions
245.140	Penalties and Fines
245.150	Hearings

AUTHORITY: Implementing and authorized by the Home Health Agency Licensing Act [210 ILCS 55].

SOURCE: Adopted at 2 Ill. Reg. 31, p. 77, effective August 2, 1978; emergency amendment at 3 Ill. Reg. 38, p. 314, effective September 7, 1979, for a maximum of 150 days; amended at 3 Ill. Reg. 40, p. 153, effective October 6, 1979; emergency amendment at 4 Ill. Reg. 18, p. 129, effective April 21, 1980, for a maximum of 150 days; amended at 4 Ill. Reg. 40, p. 56, effective September 23, 1980; emergency amendment at 6 Ill. Reg. 5855, effective April 28, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 11006, effective August 30, 1982; amended at 7 Ill. Reg. 13665, effective October 4, 1983; codified at 8 Ill. Reg. 16829; amended at 9 Ill. Reg. 4836, effective April 1, 1985; amended at 14

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Ill. Reg. 2382, effective February 15, 1990; amended at 15 Ill. Reg. 5376, effective May 1, 1991; amended at 18 Ill. Reg. 2414, effective January 22, 1994; emergency amendments at 20 Ill. Reg. 488, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 3273, effective February 15, 1996; amended at 20 Ill. Reg. 10033, effective July 15, 1996; amended at 22 Ill. Reg. 3948, effective February 13, 1998; amended at 22 Ill. Reg. 22050, effective December 10, 1998; amended at 23 Ill. Reg. 1028, effective January 15, 1999; amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART B: OPERATIONAL REQUIREMENTS

Section 245.70 Home Health Aide Training

a) Each Home Health agency shall ensure that all persons employed as home health aides or under any other title, whose duties are to assist with the personal, nursing or medical care of the patients, and who are not otherwise licensed, certified or registered in accordance with Illinois law to render such care, comply with one of the following conditions within 45 days of initial employment:

1) Is approved Provide documentation of registration on the Department's Nurse Aide Registry. "Approved" means that the home health aide has successfully completed the training requirements of the Long-Term Care Assistants and Aides Training Programs Code (77 Ill. Adm. Code 395) or has met the equivalency requirements of this Section and does not have a disqualifying criminal background check without a waiver. (See Section 245.72.) or

2) Enroll in a training program that has been approved by the Department under its rules governing training programs for nursing assistants and aides (77 Ill. Adm. Code 395) and pass the Department approved nursing assistant competency examination; the program course work shall be successfully completed and the competency examination passed by the nursing assistant no later than 120 days after the date of initial employment; unless the training program is conducted by a community college or other educational institution on a term, semester, or trimester basis; or

23) Meet equivalencies established in subsection (b) of this Section. Equivalency may be established by any one of the following:

1) Documentation of successful completion of a training course approved by another state as evidenced by a diploma or certificate.

2) Documentation of successful completion of a nursing arts course (e.g., Basics in Nursing, Fundamentals of Nursing, Nursing 101), which included at least 40 hours of supervised clinical experience, in an accredited nurse training program as evidenced by diploma, certificate or other written verification from the school and successful completion of the Department-established



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- 1961, ch. 38, pars. 3, 236, 358, 360, 361, 362, 363, 364, 364a, 365, 370, 373, 373a, 417, and 474);
- 3) Kidnaping or child abduction (Sections 10-1, 10-2, 10-5 and 10-7 of the Criminal Code of 1961 [720 ILCS 5/10-1, 10-2, 10-5, and 10-7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-1, 10-2, 10-5, and 10-7; Ill. Rev. Stat. 1985, ch. 38, par. 10-6; Ill. Rev. Stat. 1961, ch. 38, pars. 384 to 386));
- 4) Unlawful restraint or forcible detention (Sections 10-3, 10-3.1, and 10-4 of the Criminal Code of 1961 [720 ILCS 5/10-3, 10-3.1, and 10-4] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-3, 10-3.1, and 10-4; Ill. Rev. Stat. 1961, ch. 38, pars. 252, 252.1, and 252.4));
- 5) Indecent solicitation of a child, sexual exploitation of a child, exploitation of a child, child pornography (Sections 11-6, 11-9.1, 11-19.2, and 11-20.1 of the Criminal Code of 1961 [720 ILCS 5/11-6, 11-9.1, 11-19.2, and 11-20.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-6, 11-19.2 and 11-20.1; Ill. Rev. Stat. 1983, ch. 38, par. 11-20a; Ill. Rev. Stat. 1961, ch. 38, pars. 103 and 104));
- 6) Assault, battery, heinous battery, tampering with food, drugs or cosmetics, or infliction of great bodily harm (Sections 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7 of the Criminal Code of 1961 [720 ILCS 5/12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7; Ill. Rev. Stat. 1961, ch. 38, pars. 55, 56, and 56a to 60b));
- 7) Aggravated stalking (Section 12-7.4 of the Criminal Code of 1961 [720 ILCS 5/12-7.4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-7.4));
- 8) Home invasion (Section 12-11 of the Criminal Code of 1961 [720 ILCS 5/12-11] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-11));
- 9) Sexual assault or sexual abuse (Sections 12-13, 12-14, 12-14.1, 12-15, and 12-16 of the Criminal Code of 1961 [720 ILCS 5/12-13, 12-14, 12-14.1, 12-15, and 12-16] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-1, 11-2, 11-3, 11-4, 11-5, 12-13, 12-14, 12-15, and 12-16; Ill. Rev. Stat. 1985, ch. 38, pars. 11-1, 11-4, and 11-4.1; Ill. Rev. Stat. 1961, ch. 38, pars. 109, 141, 142, 490, and 491));
- 10) Abuse or gross neglect of a long-term care facility resident (Section 12-19 of the Criminal Code of 1961 [720 ILCS 5/12-19] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-19));
- 11) Criminal neglect of an elderly or disabled person (Section 12-21 of the Criminal Code of 1961 [720 ILCS 5/12-21] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-21));

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- 3) nursing assistant competency test.  
Documentation of successful completion of a United States military training program that includes the content of the Basic Nursing Assistant Training Program (see 77 Ill. Adm. Code 395), as evidenced by a diploma, certification, DD-214, or other written verification, and successful completion of the written portion of the Department-established **approved** nursing assistant competency evaluation.
- 4) Documentation of completion of a nursing program in a foreign country, including the following, and successful completion of the Department-established competency test:
  - A) A copy of the license, diploma, registration or other proof of completion of the program;
  - B) Proof of application to the Department of Professional Regulation for licensure in Illinois;
  - C) A copy of the Social Security card; and
  - D) Visa or proof of citizenship.
- c) Requests to establish equivalency shall be submitted to the Department with accompanying documentation.
- d) The Home Health Agency is responsible for assuring that the individuals who furnish home health aide services on its behalf are competent to carry out assigned tasks in the patient's place of residence.
- e) A Home Health Agency shall not employ an individual as a home health aide unless the Agency has inquired of the Department as to information in the Nurse Aide Registry concerning findings of abuse, neglect, or misappropriation of property.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 245.72 Health Care Worker Background Check

- a) The agency shall not knowingly hire any individual in a position with duties involving direct care for patients if that person has been convicted of committing or attempting to commit one or more of the following offenses (Section 25 of the Health Care Worker Background Check Act [225 ILCS 46/25]):
  - 1) Solicitation of murder, solicitation of murder for hire (Sections 8-1.1 and 8-1.2 of the Criminal Code of 1961 [720 ILCS 5/8-1.1 and 8-1.2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 8-1.1 and 8-1.2));
  - 2) Murder, homicide, manslaughter or concealment of a homicidal death (Sections 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3 of the Criminal Code of 1961 [720 ILCS 5/9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2 and 9-3.3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2 and 9-3.3; Ill. Rev. Stat. 1985; ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 3, 236, 358, 360, 361, 362, 363, 364, 364a, 365, 370, 373, 373a, 417, and 474));

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- 12) Endangering the life or health of a child (Section 12-21.6 of the Criminal Code of 1961 [720 ILCS 5/12-21.6] (formerly Ill. Rev. Stat. 1961, ch. 38, par. 2354);
- 13) Ritual mutilation, ritualized abuse of a child (Sections 12-32 and 12-33 of the Criminal Code of 1961 [720 ILCS 5/12-32 and 12-33] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-32 and 12-33));
- 14) Theft, retail theft (Sections 16-1 and 16A-3 of the Criminal Code of 1961 [720 ILCS 5/16-1 and 16A-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 16-1 and 16A-3); Ill. Rev. Stat. 1961, ch. 38, pars. 62, 207 to 218, 240 to 244, 246, 253, 254.1, 258, 262, 262a, 273, 290, 291, 301a, 354, 387 to 388b, 389, 393 to 400, 404a to 404c, 438, 492 to 496));
- 15) Financial exploitation of an elderly or disabled person (Section 16-1.3 of the Criminal Code of 1961 [720 ILCS 5/16-1.3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 16-1.3));
- 16) Forgery (Section 17-3 of the Criminal Code of 1961 [720 ILCS 5/17-3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 17-3); Ill. Rev. Stat. 1961, ch. 38, pars. 151 and 277 to 286));
- 17) Robbery, armed robbery (Sections 18-1 and 18-2 of the Criminal Code of 1961 [720 ILCS 5/18-1 and 18-2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 18-1 and 18-2));
- 18) Vehicular hijacking, aggravated vehicular hijacking, aggravated robbery (Sections 18-3, 18-4, and 18-5 of the Criminal Code of 1961 [720 ILCS 5/18-3, 18-4, and 18-5]);
- 19) Burglary, residential burglary (Sections 19-1 and 19-3 of the Criminal Code of 1961 [720 ILCS 5/19-1 and 19-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 19-1 and 19-3); Ill. Rev. Stat. 1961, ch. 38, pars. 84 to 86, 88 and 501));
- 20) Criminal trespass to a residence (Section 19-4 of the Criminal Code of 1961 [720 ILCS 5/19-4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 19-4));
- 21) Arson (Sections 20-1 and 20-1.1 of the Criminal Code of 1961 [720 ILCS 5/20-1 and 20-1.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 20-1 and 20-1.1); Ill. Rev. Stat. 1961, ch. 38, pars. 48 to 53 and 236 to 238));
- 22) Unlawful use of weapons, aggravated discharge of a firearm, or reckless discharge of a firearm (Sections 24-1, 24-1.2, and 24-1.5 of the Criminal Code of 1961 [720 ILCS 5/24-1, 24-1.2, and 24-1.5] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 24-1 and 24-1.2); Ill. Rev. Stat. 1961, ch. 38, pars. 152, 152a, 155, 155a to 158b, 414a to 414c, 414e and 414g));
- 23) Armed violence - elements of the offense (Section 33A-2 of the Criminal Code of 1961 [720 ILCS 5/33A-2] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 33A-2));
- 24) Those provided in Section 4 of the Wrongs to Children Act (Section 4 of the Wrongs to Children Act [720 ILCS 150/4])

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- (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354));
- 25) Cruelty to children (Section 53 of the Criminal Jurisprudence Act [720 ILCS 5/53] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2368));
- 26) Manufacture, delivery or trafficking of cannabis, delivery of cannabis on school grounds, or delivery to person under 18, violation by person under 18 (Sections 5, 5.1, 5.2, 7, and 9 of the Cannabis Control Act [720 ILCS 550/5, 5.1, 5.2, 7, and 9] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 705, 705.1, 705.2, 707 and 709)); or
- 27) Manufacture, delivery or trafficking of controlled substances (Sections 401, 401.1, 404, 405, 405.1, 407 and 407.1 of the Illinois Controlled Substances Act [720 ILCS 570/401, 401.1, 404, 405, 405.1, 407 and 407.1] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 1401, 1401.1, 1404, 1405, 1405.1, 1407, and 1407.1)).
- b) The agency shall not knowingly employ or retain any individual in a position with duties involving direct care for patients if that person has been convicted of committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) of this Section unless the applicant, employee or employer obtains a waiver pursuant to subsections (m)(4) and (o)(4) of this Section. (Section 25 of the Health Care Worker Background Check Act)
- c) The agency shall not hire, employ, or retain any individual in a position with duties involving direct care of clients, patients, or residents if the agency becomes aware that the individual has been convicted in another state of committing or attempting to commit an offense that has the same or similar elements as an offense listed in subsections (a)(1) to (27) of this Section, as verified by court records, records from a State agency, or an FBI criminal history record check. This shall not be construed to mean that an agency has an obligation to conduct a criminal history records check in other states in which an employee has resided. (Section 25(b) of the Act)
- de) For the purpose of this Section:
- 1) "Applicant" means an individual seeking employment with an agency who has received a bona fide conditional offer of employment.
  - 2) "Conditional offer of employment" means a bona fide offer of employment by an agency to an applicant, which is contingent upon the receipt of a report from the Department of State Police indicating that the applicant does not have a record of conviction of any of the criminal offenses listed in subsections (a)(1) to (27) of this Section.
  - 3) "Direct care" means the provision of nursing care or assistance with feeding, meals, dressing, movement, bathing, or other personal needs, or maintenance, or general supervision, and oversight, of the physical and mental well-being of an individual who is incapable of managing his or her person whether or not a guardian has been appointed for that individual.
  - 4) "Initiate" means the obtaining of the authorization for a record

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check from a student, applicant, or employee. (Section 15 of the Health Care Worker Background Check Act)

e) For purposes of the Health Care Worker Background Check Act, the agency shall establish a policy defining which employees provide direct care. In making this determination the agency shall consider the following:

- 1) The employee's assigned job responsibilities as set forth in the employee's job description;
- 2) Whether the employee is required to or has the opportunity to be alone with patients, with the exception of infrequent or unusual occasions;
- 3) Whether the employee's responsibilities include physical contact with patients, for example to provide therapy or to draw blood.

f) Beginning January 1, 1996, when the agency makes a conditional offer of employment to an applicant who is not exempt under subsection (s)(4) of this Section, for a position with duties that involve direct care for patients, the employer must initiate or have initiated on its behalf a Uniform Conviction Information Act (UCIA) criminal history record check for that applicant. (Section 30(c) of the Health Care Worker Background Check Act) If the applicant is on the Department's Nurse Aide Registry in good standing and has had a UCIA criminal history record check within the last 12 months, the employer need not initiate another check.

g) The facility shall transmit all necessary information and fees to the Illinois State Police within 10 working days after receipt of the authorization. (Section 15 of the Health Care Worker Background Check Act)

h) The agency may accept an authentic UCIA criminal history record check that has been conducted within the last 12 months rather than initiating a check as required in subsection (f)(4) of this Section.

i) The request for a UCIA criminal history record check shall be made as prescribed by the Department of State Police. The applicant or employee must be notified of the following whenever a non-fingerprint-based UCIA criminal history record check is made:

- 1) That the agency shall request or have requested on its behalf a non-fingerprint-based UCIA criminal history record check pursuant to the Health Care Worker Background Check Act.
- 2) That the applicant or employee has a right to obtain a copy of the criminal records report from the agency, challenge the accuracy and completeness of the report, and request a waiver in accordance with subsection (m)(4) of this Section.
- 3) That the applicant, if hired conditionally, may be terminated if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the applicant's identity is validated and it is determined that the applicant or employee does not have a disqualifying criminal history record based on a fingerprint-based records

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check pursuant to subsection (k)(4) of this Section.

4) That the applicant, if not hired conditionally, shall not be hired if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the applicant's record is cleared based on a fingerprint-based records check pursuant to subsection (k)(4) of this Section.

5) That the employee may be terminated if the criminal records report indicates that the employee has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the employee's record is cleared based on a fingerprint-based records check pursuant to subsection (k)(4) of this Section. (Section 30(e) and (f) of the Health Care Worker Background Check Act)

j) An agency may conditionally employ an applicant to provide direct care for up to three months pending the results of a UCIA criminal history record check. (Section 30(g) of the Health Care Worker Background Check Act)

k) An applicant or employee whose non-fingerprint-based UCIA criminal history record check indicates a conviction for committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) of this Section may request that the agency or its designee or the Department commence a fingerprint-based UCIA criminal records check by submitting any necessary fees and information in a form and manner prescribed by the Department of State Police. (Section 35 of the Health Care Worker Background Check Act)

l) An agency having actual knowledge from a source other than a non-fingerprint check that an employee has been convicted of committing or attempting to commit one of the offenses enumerated in Section 25 of the Act must initiate a fingerprint-based background check within 10 working days after acquiring that knowledge. The agency may continue to employ that individual in a direct care position, may reassign that individual to a non-direct care position, or may suspend the individual until the results of the fingerprint-based background check are received. (Section 30(d) of the Health Care Worker Background Check Act)

m) An applicant, employee or employer may request a waiver to subsection (a), or (b) or (c) of this Section by submitting the following to the Department within five working days after the receipt of the criminal records report:

- 1) A completed fingerprint-based UCIA criminal records check form (Section 40(a) of the Health Care Worker Background Check Act) (which the Department will forward to the Illinois State Police); and
- 2) A certified check, money order or agency check made payable to the Department of State Police for the amount of money necessary to initiate a fingerprint-based UCIA criminal records check.



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n†) The Department may accept the results of the fingerprint-based UCIA criminal records check instead of the items required by subsections (m),††(1) and (2) above.

om) The Department may grant a waiver based on mitigating circumstances, which may include:

- 1) The age of the individual at which the crime was committed;
- 2) The circumstances surrounding the crime;
- 3) The length of time since the conviction;
- 4) The applicant's or employee's criminal history since the conviction;
- 5) The applicant's or employee's work history;
- 6) The applicant's or employee's current employment references;
- 7) The applicant's or employee's character references;
- 8) Nurse Aide Registry records; and
- 9) Other evidence demonstrating the ability of the applicant or employee to perform the employment responsibilities competently and evidence that the applicant or employee does not pose a threat to the health or safety of patients. (Section 40(b) of the Health Care Worker Background Check Act)

pn) An individual shall not be employed in a direct care position from the time that the employer receives the results of a non-fingerprint check containing disqualifying conditions until the time that the individual receives a waiver from the Department. If the individual challenges the results of the non-fingerprint check, the employer may continue to employ the individual in a direct care position if the individual presents convincing evidence to the employer that the non-fingerprint check is invalid. If the individual challenges the results of the non-fingerprint check, his or her identity shall be validated by a fingerprint-based records check in accordance with subsection (k) of this Section. ~~An individual may not be employed in a direct care position during the pendency of a waiver request.~~ (Section 40††(d) of the Health Care Worker Background Check Act)

po) An agency is not obligated to employ or offer permanent employment to an applicant, or to retain an employee who is granted a waiver. (Section 40(f) of the Health Care Worker Background Check Act)

pd) An agency may retain the individual in a direct care position if the individual presents clear and convincing evidence to the agency that the non-fingerprint-based criminal records report is invalid and if there is a good faith belief on the part of the employer that the individual did not commit an offense listed in subsections (a)(1) to (27) of this Section, pending positive verification through a fingerprint-based criminal records check. Such evidence may include, but not be limited to:

- 1) certified court records;
- 2) written verification from the State's Attorney's office that prosecuted the conviction at issue;
- 3) written verification of employment during the time period during which the crime was committed or during the incarceration period

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stated in the report;  
4) a signed affidavit from the individual concerning the validity of the report; or  
5) documentation from a local law enforcement agency that the individual was not convicted of a disqualifying crime.

sq) This Section shall not apply to:

- 1) An individual who is licensed by the Department of Professional Regulation or the Department of Public Health under another law of this State;
- 2) An individual employed or retained by a health care employer for whom a criminal background check is required by another law of this State; or
- 3) A student in a licensed health care field including, but not limited to, a student nurse, a physical therapy student, or a respiratory care student unless he or she is employed by a health care employer in a position with duties involving direct care for residents. (Section 20 of the Health Care Worker Background Check Act)

tr) An employer need not initiate an additional criminal background check for an employee if the employer initiated a criminal background check for the employee after January 1, 1996 and prior to January 1, 1998. This subsection applies only to persons employed prior to January 1, 1998. Any person newly employed on or after January 1, 1998 must receive a background check as required by Section 30 of the Health Care Worker Background Check Act. (Section 25.1 of the Health Care Worker Background Check Act)

ts) The agency must send a copy of the results of the UCIA criminal history record check to the State Nurse Aide Registry for those individuals who are on the Registry. (Section 30(b) of the Health Care Worker Background Check Act) The agency shall include the individual's Social Security number on the criminal history record check results.

vt) The agency shall retain on file for a period of 5 years records of criminal records requests for all employees. The facility shall retain the results of the UCIA criminal history records check and waiver, if appropriate, for the duration of the individual's employment. The files shall be subject to inspection by the Department. A fine of \$500 shall be imposed for failure to maintain these records. (Section 50 of the Health Care Worker Background Check Act)

wn) The agency shall maintain a copy of the employee's criminal history record check results and waiver, if applicable, in the personnel file or other secure location accessible to the Department.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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1) Heading of the Part: Illinois Veterans' Homes Code

2) Code Citation: 77 Ill. Adm. Code 340

3) Section Numbers: Adopted Action:  
 340.1375 Amendment  
 340.1376 Amendment  
 340.1377 Amendment  
 340.1378 New Section  
 340.1700 Amendment  
 340.1730 New Section

4) Statutory Authority: Nursing Home Care Act [210 ILCS 45]

5) Effective date of amendments: November 1, 2000

6) Does this rulemaking contain an automatic repeal date? No

7) Does this rulemaking contain any incorporations by reference? No

8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal was Published in Illinois Register: March 17, 2000 - 24 Ill. Reg. 4131

10) Has JCAR issued a Statement of Objection to these amendments? No

11) Difference between proposal and final version: The following changes were made in response to comments received during the first notice or public comment period:

1. In Section 340.1375(a)(1)(D), "less" was stricken and "fewer" was added.
2. In Section 340.1375(a)(3)(G), "to it" was stricken.
3. In Section 340.1376(b)(2) and (4), "written portion of the" was added.
4. Section 340.1376(b)(5) was deleted.
5. In Section 340.1377(e)(3), "more than 50 percent of" was deleted.

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6. In Section 340.1378(g), a comma was added after "assessment".

7. In Section 340.1700(c)(2), "Activity Consultant Certified (ACC), Certified Activity Consultant (CAC)," was deleted.

8. In Section 340.1700(c)(2), "Licensed Social Worker (LSW) or" was added after "or a".

9. In Section 340.1700(c)(3), "October" was changed to "November".

10. In Section 340.1700(c)(4), "160" was changed to "180".

11. In Section 340.1700(c)(4), "Council of Accreditation of Continuing Education Units" was deleted and "Association for Continuing Education and Training" was added.

12. In Section 340.1700(c)(4), "previously" was added after "have".

13. In Section 340.1700(c)(4), "sponsored by the Illinois Activity Professional Association or the National Certification Council of Activity Professionals" was deleted.

14. In Section 340.1700(d), "for" was deleted and "if" was added; "to" was deleted; "participate" was changed to "participates".

15. In Section 340.1700(d), "Orders" was changed to "orders".

16. In Section 340.1700(e), "comprehensive" was deleted.

17. In Section 340.1700(i) "while they are in the facility" was added after "activities" in the second line.

18. In Section 340.1700(i), "while they are in the facility" was deleted in the third line.

19. In Section 340.1730(b), "comprehensive" was deleted.

20. In the table of contents, "Alzheimer's Special Care Delivery" was added.

21. In Section 340.1700(a), "and preferences" was added after "interests".

22. In Section 340.1700(a), "fullest possible" was stricken.

23. In Section 340.1700(a), "maximize benefits to" was stricken and "benefit" was added.

24. In Section 340.1700(c)(4), "after November 1, 2000" was added after

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"director".

25. In Section 340.1700(c)(4), "guidelines of the" was added after "the".

26. In Section 340.1700(c)(4), "36-hour basic orientation course, a" was added after "taken a".

The following changes were made in response to comments and suggestions of JCAR:

1. In Section 340.1378(h)(2), "a" was added after "perform".
2. In Section 340.1378(j)(1), (2), and (3), "necessary" was added before "equipment".
3. In Section 340.1378(k), the comma after "rights" was changed to a semi-colon.
4. In Section 340.1700(c)(4), "qualified as a CTRS, OTR/L, LSW or LCSW as" was added after "individuals".
5. In Section 340.1700(h)(2), "simulation" was changed to "stimulation".

In addition, various typographical, grammatical and form changes were made in response to the comments from JCAR.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? All changes have been made as agreed upon.

13) Will these amendments replace emergency amendments currently in effect?  
No

14) Are there any other amendments pending on this Part? Yes

Section Numbers	Proposed Action	Ill. Reg. Citation
340.1010	Amendment	24 Ill. Reg. 13263
340.1115	Amendment	24 Ill. Reg. 13263
340.1510	Amendment	24 Ill. Reg. 13263

15) Summary and purpose of the amendments: Sections 340.1375 (Personnel Requirements) and 340.1376 (Registry of Certified Nurse Aides) are amended to conform the language of the rules to the Nursing Home Care Act and to provide consistency with the rules in Part 300 (Skilled Nursing and Intermediate Care Facilities Code). Requirements for approval on the Nurse Aide Registry are included. Requirements for equivalencies are revised to include completion of a nursing program in a foreign country and, within 120 days after employment, successful completion of the

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Department-established nursing assistant competency test. The requirement for application to the Department of Professional Regulation will be repealed in a subsequent rulemaking.

Section 340.1377 (Health Care Worker Background Check) is amended to implement P.A. 91-598 (effective January 1, 2000). A facility will be prohibited from hiring, employing or retaining a person with direct care duties if the facility becomes aware that the individual has been convicted in another state of committing or attempting to commit an offense that has the same or similar elements as a disqualifying crime under the Health Care Worker Background Check Act, as verified by court records, records from a State agency, or an FBI criminal history record check. The facility is not, however, obligated to conduct background checks in other states in which an employee has resided. The definition of "direct care" is amended, and guidelines are included to assist facilities in determining which employees provide direct care. The rules are also amended to clarify the status of employees during the waiver process.

Section 340.1378 (Resident Attendants) is added to implement Public Act 91-461, effective August 6, 1999. This legislation allows facilities to employ resident attendants to assist residents with eating, drinking, and personal hygiene. The amendments include requirements for resident attendant training and competency and for assessment of residents to determine which residents can be assisted by resident attendants.

Section 340.1700 (Recreational and Activity Programs) is substantially revised to enhance activity programs for long-term care residents. Activity personnel shall be provided to meet the needs of the residents; staff time each week shall total not less than 45 minutes multiplied by the number of residents in the facility. Activity personnel working under the direction of the activity director will be required to have a minimum of 6 hours of in-service training per calendar year or employment year, directly related to recreation/activities. Requirements for consultation and education and training for activity directors are included, as well as requirements for an assessment of each resident and participation in care planning by activity staff. Examples of specific types of activities are included. Section 340.1730 (Volunteer Program) is added to set forth requirements for volunteer programs, including an orientation program.

16) Information and questions regarding these adopted amendments shall be directed to:

Paul Thompson  
Division of Legal Services  
Department of Public Health  
535 West Jefferson, Fifth Floor  
Springfield, Illinois 62761  
217/782-2043



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e-mail: rules@dph.state.il.us

The full text of the adopted amendments begins on the next page:

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TITLE 77: PUBLIC HEALTH  
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH  
SUBCHAPTER C: LONG-TERM CARE FACILITIES

## PART 340

## ILLINOIS VETERANS' HOMES CODE

## SUBPART A: GENERAL PROVISIONS

Section	
340.1000	Definitions
340.1010	Incorporated and Referenced Materials
340.1110	General Requirements
340.1115	Federal Veterans' Regulations
340.1120	Application for License
340.1125	Alzheimer's Special Care Delivery
340.1130	Criteria for Adverse Licensure Actions
340.1140	Denial of Initial License
340.1150	Revocation or Denial of Renewal of License
340.1160	Inspections, Surveys, Evaluations, and Consultations
340.1170	Presentation of Findings by the Department
340.1190	Ownership Disclosure
340.1200	Monitor and Receivership
340.1210	Determination of a Violation
340.1220	Determination of the Level of a Violation
340.1230	Plans of Correction and Reports of Correction
340.1240	Calculation of Penalties
340.1245	Conditions for Assessment of Penalties
340.1250	Reduction or Waiver of Penalties
340.1255	Supported Congregate Living Arrangement Demonstration
340.1260	Waivers

## SUBPART B: POLICIES AND FACILITY RECORDS

Section	
340.1300	Facility Policies
340.1310	Admission and Discharge Policies
340.1320	Disaster Preparedness
340.1330	Serious Incidents and Accidents
340.1335	Infection Control
340.1340	Facility Record Requirements
340.1350	Personnel Policies
340.1360	Initial Health Evaluation for Employees
340.1370	Administrator
340.1375	Personnel Requirements
340.1376	Registry of Certified Nursing Assistants <u>Nurse-Aides</u>
340.1377	Health Care Worker Background Check
340.1378	Resident Attendants

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SUBPART C: RESIDENT RIGHTS

Section  
340.1400 Implementation of Resident Rights and Facility Responsibilities  
340.1410 General  
340.1420 Contract Between Resident and Facility  
340.1430 Residents' Advisory Council  
340.1440 Abuse and Neglect  
340.1450 Communication and Visitation  
340.1460 Resident's Funds  
340.1470 Transfer or Discharge  
340.1480 Complaint Procedures  
340.1490 Private Right of Action

SUBPART D: HEALTH SERVICES

Section  
340.1500 Medical Care Policies  
340.1505 Medical, Nursing and Restorative Services  
340.1510 Communicable Disease Policies  
340.1520 Tuberculin Skin Test Procedures  
340.1530 Physician Services  
340.1535 Dental Programs  
340.1540 Life-Sustaining Treatments  
340.1550 Obstetrical and Gynecological Care  
340.1560 Nursing Personnel  
340.1570 Personal Care  
340.1580 Restraints  
340.1590 None emergency Use of Physical Restraints  
340.1600 Emergency Use of Physical Restraints  
340.1610 Unnecessary, Psychotropic, and Antipsychotic Drugs  
340.1620 Medication Administration  
340.1630 Self-Administration of Medication

SUBPART E: MEDICATION ADMINISTRATION SERVICES

Section  
340.1650 Medication Policies and Procedures  
340.1655 Conformance with Physician's Orders  
340.1660 Administration of Medication  
340.1665 Control of Medication  
340.1670 Labeling and Storage of Medication

SUBPART F: RESIDENT LIVING SERVICES

Section  
340.1700 Recreational and Activity Programs  
340.1710 Social Services

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340.1720 Work Programs  
340.1730 Volunteer Program  
  
Section  
340.1800 Resident Record Requirements  
340.1810 Content of Medical Record  
340.1820 Records Pertaining to Resident's Property  
340.1830 Retention, Transfer, and Inspection of Records  
340.1840 Confidentiality of Resident's Records

SUBPART G: RESIDENT RECORDS

SUBPART H: FOOD SERVICE

Section  
340.1900 Food Service Staff  
340.1910 Diet Orders  
340.1920 Meal Planning  
340.1930 Therapeutic Diets (Repealed)  
340.1940 Menus and Food Records  
340.1950 Food Preparation and Service  
340.1960 Kitchen Equipment, Utensils and Supplies

SUBPART I: PHYSICAL PLANT SERVICES,  
FURNISHINGS, EQUIPMENT AND SUPPLIES

Section  
340.2000 Maintenance  
340.2010 Water Supply, Sewage Disposal and Plumbing  
340.2020 Housekeeping  
340.2030 Laundry Services  
340.2040 Furnishings  
340.2050 Equipment and Supplies  
340.2060 Heat Index Table/Apparent Temperature  
340.2070 Guidelines for the Use of Various Drugs

AUTHORITY: Implementing and authorized by the Nursing Home Care Act [210 ILCS 45].

SOURCE: Emergency rule adopted at 18 Ill. Reg. 10391, effective June 21, 1994, for a maximum of 150 days; emergency rule expired November 18, 1994; adopted at 19 Ill. Reg. 5679, effective April 3, 1995; emergency amendments at 20 Ill. Reg. 496, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 10045, effective July 15, 1996; amended at 20 Ill. Reg. 12013, effective September 10, 1996; amended at 22 Ill. Reg. 3959, effective February 13, 1998; amended at 22 Ill. Reg. 7162, effective April 15, 1998; amended at 23 Ill. Reg. 1038, effective January 15, 1999; amended at 23 Ill. Reg. 7931, effective July 15, 1999; amended at 24 Ill. Reg.

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Section 340.1375 Personnel Requirements

- a) Supervision of Nursing Services
- 1) The facility shall have a director of nursing service (DONS) who shall be a registered nurse.
  - A) This person shall have knowledge and training in nursing service administration and restorative and rehabilitative nursing. This person shall also have some knowledge and training in the care of the type of residents for which the facility cares.
  - B) This person shall be a full-time employee who is on duty a minimum of 36 hours, four days per week.
  - C) A facility may, with written approval from the Department, have two nurses share the duties of this position if the facility is unable to obtain a full-time person. Such an arrangement will be approved granted-approval only through written documentation that the facility was unable to obtain the full-time services of a qualified individual to fill this position. Such documentation shall include, but not be limited to: an advertisement that has appeared in a newspaper of general circulation in the area for at least three weeks; the names, addresses and phone numbers of all persons who applied for the position and the reasons why they were not acceptable or would not work full time full-time; and information about the numbers and availability of licensed nurses in the area. The Department will approve only when such documentation indicates that there were no qualified applicants who were willing to accept the job on a full-time basis, and the pool of nurses available in the area cannot be expected to produce, in the near future, a qualified person who is willing to work full time full-time.
  - D) In facilities of fewer less than 50 beds, this person may also provide direct patient care, and this person's time may be included in meeting staff/resident ratio requirements.
  - 2) Facilities of 100 or more beds shall have a licensed nurse designated as the assistant director of nursing service. This person shall perform the duties of the DONS when the DONS is on vacation or extended sick leave. The assistant may provide direct patient care and be included in the staff to resident ratio calculations when not acting as the DONS.
  - A) The assistant shall be a full-time employee who is on duty a minimum of 36 hours, four days per week. The assistant may be assigned to work hours any time of the day or night.

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- B) The assistant shall assist the DONS in carrying out the responsibilities of the DONS.
- 3) The DONS shall oversee the nursing services of the facility. This person's duties shall include:
  - A) Assigning and directing the activities of nursing service personnel.
  - B) Assuring that resident care plans are developed and maintained.
  - C) Recommending to the administrator the number and levels of nursing personnel to be employed, participating in their recruitment and selection and recommending termination of employment when necessary.
  - D) Participating in planning and budgeting for nursing services including purchasing of necessary equipment and supplies.
  - E) Developing and maintaining nursing service objectives, standards of nursing practice, written policies and procedures, and written job descriptions for each level of nursing personnel.
  - F) Coordinating health services and nursing services with other resident care services such as medical, pharmaceutical, dietary activities, and any other restorative/rehabilitative services offered.
  - G) Planning of inservice education, embracing orientation, skill training, and ongoing education for all personnel covering all aspects of resident care and programming. The education program shall include training and practice in activities and restorative/rehabilitative nursing techniques through out-of-facility or in-facility training programs. This person may conduct these programs personally or see to it that they are carried out.
  - H) Participating in the development and implementation of resident care policies and bringing resident care problems, requiring changes in policy, to the attention of the facility's policy development group.
  - I) Participating in the screening of prospective residents and their placement in terms of services they need and nursing competencies available.

b) Nursing Personnel

- 1) A there-shall-be-a licensed or registered nurse shall be on duty and designated as being in charge of nursing services on all shifts when neither the director of nursing service nor assistant director of nursing service is on duty. If registered nurses and licensed practical nurses are on duty on the same shift, this charge nurse shall be the registered nurse.
- 2) At there-shall-be-at least one registered nurse shall be on duty seven days per week for eight consecutive hours. At there-shall-be-at least one registered nurse or licensed practical nurse shall be on duty on each floor housing residents.

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  - F) Coordinating health services and nursing services with other resident care services such as medical, pharmaceutical, dietary activities, and any other restorative/rehabilitative services offered.
  - G) Planning of inservice education, embracing orientation, skill training, and ongoing education for all personnel covering all aspects of resident care and programming. The education program shall include training and practice in activities and restorative/rehabilitative nursing techniques through out-of-facility or in-facility training programs. This person may conduct these programs personally or see to it that they are carried out.
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3) The need for licensed nurses on each nursing unit in a nursing facility will be determined on an individual case basis, dependent upon the individual situation. The need for an additional registered or licensed practical nurse to serve as a "house supervisor" will be determined on an individual basis. If such additional staffing is required, the Department will inform the facility in writing of the kind and amount of additional staff time required, and the reason why it is needed.

## 4) Nursing Assistants

A) The facility shall assure that each person employed by the facility as a nursing assistant complies with one of the following conditions: no-later-than-45-days-after-the-date-of-initial-employment.

i) Is approved provide-documentation-of--registration on the Department's Nurse Aide Registry. "Approved" means that the nursing assistant has met the training or equivalency requirements of Section 340.1376 of this Part and does not have a disqualifying criminal background check without a waiver.

ii) Begin Enroll-in a Basic Nursing Assistant Training Program that has been approved by the Department under its rules governing training programs for nursing assistants and aides (see 77 Ill. Adm. Code 395) no later than 45 days after employment. The nursing assistant shall successfully complete the training program within program shall be successfully completed no-later-than 120 days after the date of initial employment. unless-that-training-program-is conducted-by-a-community-college-or-other-educational institution-on-a-term-semester-or-trimester-basis. However--a A nursing assistant enrolled in a program approved in accordance with 77 Ill. Adm. Code 395.150(a)(2) shall not may be employed no more than 120 days prior to successfully completing the successful-completion-of the program.

iii) Within 120 days after initial employment, submits Submit documentation in accordance with Section 340.1376 of this Part in-order to be registered on the Nurse Aide Registry.

B) The facility shall assure that each person employed by the facility as a nursing assistant shall meet each of the following requirements:

i) Be at least 16 years of age, of temperate habits and good moral character, honest, reliable, and trustworthy. (Section 3-206(a)(1) of the Act)

ii) Be able to speak and understand the English language or a language understood by a substantial percentage of the facility's residents. (Section 3-206(a)(2) of

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the Act)

iii) Provide evidence of prior employment or occupation, if any, and residence for two years prior to present employment as a nursing assistant as--a--nursing assistant. (Section 3-206(a)(3) of the Act)

iv) Have completed at least eight years of grade school or provide proof of equivalent knowledge. (Section 3-206(a)(4) of the Act)

C) The facility shall certify to the Department the name and residence address of each nursing assistant employed by the facility, and that the employee subject to this Section meets all requirements of this Section. Such certification shall be retained by the facility as part of the employee's personnel record. (Section 3-206(d) and (e) of the Act)

D) A facility shall not employ an individual as a nursing assistant nurse-aide unless the facility has inquired of the Department as to information in the registry concerning the individual. (Section 3-206.01 of the Act) The Department shall advise the inquirer if the individual is on the Registry, has findings of abuse, neglect or misappropriation of property in accordance with Sections 3-206.01 and 3-206.02 of the Act, and if the individual has a current background check (see Section 340.1377 of this Part).

E) Nursing assistants must be able to demonstrate competency in the principles, techniques, and procedures covered by the basic nursing assistant training program curriculum described in the--rules--governing--training--programs--for nursing--assistants--and--aides--( 77 Ill. Adm. Code 395).

c) There shall be at least one person on duty at all times who has been properly trained to handle the medical emergencies listed in Section 340.1300(f) of this Part. This person may also be counted in fulfilling the requirements of other subsections of this Section.

d) When a facility has only one employee on duty, that employee shall have been certified within the past 12 months in the provision of basic life support by an American Heart Association or American Red Cross certified training program. When there is more than one person on duty in the facility, at least two of the people on duty shall be so certified. A facility employee who is on duty serving in any capacity in the facility may be utilized to meet this requirement.

## Direct Care Staffing

1) The facility must have adequate staff in numbers, training and supervision to meet all residents' nursing, personal care and psychosocial needs at all times.

2) Staffing shall apply to hours of actual on duty time, not hours scheduled to be provided. The Director of Nursing Services time shall not be included to fulfill required hours except as allowed in subsection (a)(1)(D) of this Section. Direct care staff includes licensed nurses, certified nurse aides, social service

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staff, qualified mental retardation professionals, and activity personnel.

3) Each resident shall be provided at least 2.0 direct care staff hours each day of which at least 20 percent must be licensed nurse time.

4) In a facility whose residents participate in regularly scheduled therapeutic programs outside the facility, such as school or sheltered workshops, the minimum hours per day of direct care may be reduced proportionately as long as the facility meets the needs of the residents.

f) The facility shall provide a Resident Services Director who is assigned responsibility for the coordination and monitoring of the resident's comprehensive care plan. The director of nursing services or an individual on the professional staff of the facility may fill this assignment to assure that residents' comprehensive care plans are individualized, written in terms of short and long-range goals, understandable and utilized; their needs are met through appropriate staff interventions and community resources; and residents are involved, whenever possible, in the preparation of their plan of care.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 340.1376 Registry of Certified Nursing Assistants Nurse-Aides

a) An individual will be placed on the Nurse Aide Registry when he/she has successfully completed a training program approved in accordance with the Long-Term Care Assistants and Aides Training Program Code (77 Ill. Adm. Code 395) and has met background check information required in Section 340.1377 of this Part, and when there are no findings of abuse, neglect, or misappropriation of property in accordance with Sections 3-206.01 and 3-206.02 of the Act.

b) An individual will be placed on the Nurse Aide Registry if he/she has met background check information required in Section 340.1377 of this Part and submits documentation supporting one of the following equivalencies:

1) Documentation of current registration from another state indicating that the requirements of 42 CFR 483.151 to 483.156 483-154 (October 1, 1997) 1994, no later amendments or editions included) have been met and that there are no not documented findings of abuse, neglect, or misappropriation of property.

2) Documentation of successful completion of a nursing arts course (e.g., Basics in Nursing, Fundamentals of Nursing, Nursing 101) with at least 40 hours of supervised clinical experience in an accredited nurse training program as evidenced by a diploma, certificate or other written verification from the school and, within 120 days after employment, successful completion of the written portion of the Department-established nursing assistant

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competency test.

3) Documentation of successful completion of a United States military training program that includes the content of the Basic Nursing Assistant Training Program (see 77 Ill. Adm. Code 395) and at least 40 hours of supervised clinical experience, as evidenced by a diploma, certification, DD-214, or other written verification and, within 120 days after employment, the written portion of the written portion of the Department-established nursing assistant competency test.

4) Documentation of completion of a nursing program in a foreign country, including the following, and, within 120 days after employment, successful completion of the written portion of the Department-established nursing assistant competency test:

A) A copy of the license, diploma, registration or other proof of completion of the program;

B) Proof of application to the Department of Professional Regulation for licensure in Illinois;

C) A copy of the Social Security card; and

D) Visa or proof of citizenship.

c) An individual shall notify the Nurse Aide Registry of any change of address within 30 days and of any name change within 30 days and shall submit proof of any name change to the Department. (Section 3-206.01 of the Act)

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 340.1377 Health Care Worker Background Check

a) The facility shall not knowingly hire any individual in a position with duties involving direct care for residents if that person has been convicted of committing or attempting to commit one or more of the following offenses (Section 25(a) of the Health Care Worker Background Check Act [225 ILCS 46/25]):

1) Solicitation of murder, solicitation of murder for hire (Sections 8-1.1 and 8-1.2 of the Criminal Code of 1961 [720 ILCS 5/8-1.1 and 8-1.2]) (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 8-1.1 and 8-1.2);

2) Murder, homicide, manslaughter or concealment of a homicidal death (Sections 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3 of the Criminal Code of 1961 [720 ILCS 5/9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2 and 9-3.3]) (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3); Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 3, 236, 358, 360, 361, 362, 363, 364, 364a, 365, 370, 373, 373a, 417, and 474);

3) Kidnaping or child abduction (Sections 10-1, 10-2, 10-5 and 10-7 of the Criminal Code of 1961 [720 ILCS 5/10-1, 10-2, 10-5, and

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- 10-7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-1, 10-2, 10-5, and 10-7; Ill. Rev. Stat. 1985, ch. 38, par. 10-6; Ill. Rev. Stat. 1961, ch. 38, pars. 384 to 386));
- 4) Unlawful restraint or forcible detention (Sections 10-3, 10-3.1, and 10-4) of the Criminal Code of 1961 [720 ILCS 5/10-3, 10-3.1, and 10-4] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-3, 10-3.1, and 10-4; Ill. Rev. Stat. 1961, ch. 38, pars. 252, 252.1, and 252.4));
- 5) Indecent solicitation of a child, sexual exploitation of a child, exploitation of a child, child pornography (Sections 11-6, 11-9.1, 11-19.2, and 11-20.1 of the Criminal Code of 1961 [720 ILCS 5/11-6, 11-9.1, 11-19.2, and 11-20.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-6, 11-19.2, and 11-20.1; Ill. Rev. Stat. 1983, ch. 38, par. 11-20a; Ill. Rev. Stat. 1961, ch. 38, pars. 103 and 104));
- 6) Assault, battery, heinous battery, tampering with food, drugs or cosmetics, or infliction of great bodily harm (Sections 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7 of the Criminal Code of 1961 [720 ILCS 5/12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7; Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 55, 56, and 56a to 60b));
- 7) Aggravated stalking (Section 12-7.4 of the Criminal Code of 1961 [720 ILCS 5/12-7.4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-7.4));
- 8) Home invasion (Section 12-11 of the Criminal Code of 1961 [720 ILCS 5/12-11] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-11));
- 9) Sexual assault or sexual abuse (Sections 12-13, 12-14, 12-14.1, 12-15, and 12-16 of the Criminal Code of 1961 [720 ILCS 5/12-13, 12-14, 12-14.1, 12-15, and 12-16] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-1, 11-2, 11-3, 11-4, 11-5, 12-13, 12-14, 12-15, and 12-16; Ill. Rev. Stat. 1985, ch. 38, pars. 11-1, 11-4, and 11-4.1; Ill. Rev. Stat. 1961, ch. 38, pars. 109, 141, 142, 490, and 491));
- 10) Abuse or gross neglect of a long-term care facility resident (Section 12-19 of the Criminal Code of 1961 [720 ILCS 5/12-19] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-19));
- 11) Criminal neglect of an elderly or disabled person (Section 12-21 of the Criminal Code of 1961 [720 ILCS 5/12-21] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-21));
- 12) Endangering the life or health of a child (Section 12-21.6 of the Criminal Code of 1961 [720 ILCS 5/12-21.6] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354; Ill. Rev. Stat. 1961, ch. 38, par. 95));

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- 13) Ritual mutilation, ritualized abuse of a child (Sections 12-32 and 12-33 of the Criminal Code of 1961 [720 ILCS 5/12-32 and 12-33] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-32 and 12-33));
- 14) Theft, retail theft (Sections 16-1 and 16A-3 of the Criminal Code of 1961 [720 ILCS 5/16-1 and 16A-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 16-1 and 16A-3; Ill. Rev. Stat. 1961, ch. 38, pars. 62, 207 to 218, 240 to 244, 258, 262, 262a, 273, 290, 291, 301a, 354, 387 to 388b, 389, 393 to 400, 404a to 404c, 438, 492 to 496));
- 15) Financial exploitation of an elderly or disabled person (Section 16-1.3 of the Criminal Code of 1961 [720 ILCS 5/16-1.3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 16-1.3));
- 16) Forgery (Section 17-3 of the Criminal Code of 1961 [720 ILCS 5/17-3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 17-3; Ill. Rev. Stat. 1961, ch. 38, pars. 151 and 277 to 286));
- 17) Robbery, armed robbery (Sections 18-1 and 18-2 of the Criminal Code of 1961 [720 ILCS 5/18-1 and 18-2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 18-1 and 18-2));
- 18) Vehicular hijacking, aggravated vehicular hijacking, aggravated robbery (Sections 18-3, 18-4 and 18-5 of the Criminal Code of 1961 [720 ILCS 5/18-3, 18-4, and 18-5]);
- 19) Burglary, residential burglary (Sections 19-1 and 19-3 of the Criminal Code of 1961 [720 ILCS 5/19-1 and 19-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 19-1 and 19-3; Ill. Rev. Stat. 1961, ch. 38, pars. 84 to 86, 88, and 501));
- 20) Criminal trespass to a residence (Section 19-4 of the Criminal Code of 1961 [720 ILCS 5/19-4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 19-4));
- 21) Arson (Sections 20-1 and 20-1.1 of the Criminal Code of 1961 [720 ILCS 5/20-1 and 20-1.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 20-1 and 20-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 48 to 53 and 236 to 238));
- 22) Unlawful use of weapons, aggravated discharge of a firearm, or reckless discharge of a firearm (Sections 24-1, 24-1.2, and 24-1.5 of the Criminal Code of 1961 [720 ILCS 5/24-1, 24-1.2, and 24-1.5] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 24-1 and 24-1.2; Ill. Rev. Stat. 1961, ch. 38, pars. 152, 152a, 155, 155a to 158b, 414a to 414c, 414e, and 414g));
- 23) Armed violence - elements of the offense (Section 33A-2 of the Criminal Code of 1961 [720 ILCS 5/33A-2] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 33A-2));
- 24) Those provided in Section 4 of the Wrongs to Children Act (Section 4 of the Wrongs to Children Act [720 ILCS 150/4] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354));
- 25) Cruelty to children (Section 53 of the Criminal Jurisprudence Act [720 ILCS 115/53] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2368));



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- 26) Manufacture, delivery or trafficking of cannabis, delivery of cannabis on school grounds, or delivery to person under 18; violation by person under 18 (Sections 5, 5.1, 5.2, 7, and 9 of the Cannabis Control Act [720 ILCS 550/5, 5.1, 5.2, 7, and 9] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 705, 705.1, 705.2, 707 and 709)); or
- 27) Manufacture, delivery or trafficking of controlled substances (Sections 401, 401.1, 404, 405, 405.1, 407 and 407.1 of the Illinois Controlled Substance Act [720 ILCS 570/401, 401.1, 404, 405, 405.1, 407, 407.1] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 1401, 1401.1, 1404, 1405, 1405.1, 1407, and 1407.1)).
- b) The facility shall not knowingly employ or retain any individual in a position with duties involving direct care for residents if that person has been convicted of committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) of this Section unless the applicant, employee or employer obtains a waiver pursuant to subsections (m) ¶¶ and (o) ¶¶ of this Section. (Section 25(a) of the Health Care Worker Background Check Act)
- c) A facility shall not hire, employ, or retain any individual in a position with duties involving direct care of clients, patients, or residents if the health care employer becomes aware that the individual has been convicted in another state of committing or attempting to commit an offense that has the same or similar elements as an offense listed in subsection (a)(1) to (27) of this Section, as verified by court records, records from a State agency, or an FBI criminal history check. This shall not be construed to mean that a health care employer has an obligation to conduct a criminal history records check in other states in which an employee has resided. (Section 25(b) of the Health Care Worker Background Check Act)
- d) For the purpose of this Section:
- 1) "Applicant" means an individual seeking employment with a facility who has received a bona fide conditional offer of employment.
  - 2) "Conditional offer of employment" means a bona fide offer of employment by a facility to an applicant, which is contingent upon the receipt of a report from the Department of State Police indicating that the applicant does not have a record of conviction of any of the criminal offenses listed in subsections (a)(1) to (27) of this Section.
  - 3) "Direct care" means the provision of nursing care or assistance with feeding meals, dressing, movement, bathing, or other personal needs, or maintenance, or general well-being, of an individual who is incapable of managing his or her person whether or not a guardian has been appointed for that individual.
  - 4) "Initiate" means the obtaining of the authorization for a record check from a student, applicant, or employee. (Section 15 of the Health Care Worker Background Check Act)
  - e) For purposes of the Health Care Worker Background Check Act, the

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- facility shall establish a policy defining which employees provide direct care. In making this determination the facility shall consider the following:
- 1) The employee's assigned job responsibilities as set forth in the employee's job description;
  - 2) Whether the employee is required to or has the opportunity to be alone with residents, with the exception of infrequent or unusual occasions;
  - 3) Whether the employee's responsibilities include physical contact with residents, for example to provide therapy or to draw blood.
- f) Beginning January 1, 1996, when the facility makes a conditional offer of employment to an applicant who is not exempt under subsection (s) ¶¶ of this Section for a position with duties that involve direct care for residents, the employer shall inquire of the Nurse Aide Registry as to the status of the applicant's Uniform Conviction Information Act (UCIA) criminal history record check. If a UCIA Criminal History Record Check has not been conducted within the last 12 months, the facility must initiate or have initiated on its behalf a UCIA criminal history record check for that applicant. (Section 30(c) of the Health Care Worker Background Check Act)
- g) The facility shall transmit all necessary information and fees to the Illinois State Police within 10 working days after receipt of the authorization.
- h) The facility may accept an authentic UCIA criminal history record check that has been conducted within the last 12 months rather than initiating a check as required in subsection (f) ¶¶ of this Section.
- i) The request for a UCIA criminal history record check shall be made as prescribed by the Department of State Police. The applicant or employee must be notified of the following whenever a non-fingerprint-based UCIA criminal history record check is made:
- 1) That the facility shall request or have requested on its behalf a non-fingerprint-based UCIA criminal history record check pursuant to the Health Care Worker Background Check Act.
  - 2) That the applicant or employee has a right to obtain a copy of the criminal records report from the facility, challenge the accuracy and completeness of the report, and request a waiver in accordance with subsection (m) ¶¶ of this Section.
  - 3) That the applicant, if hired conditionally, may be terminated if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the applicant's identity is validated and it is determined that the applicant or employee does not have a disqualifying criminal history record based on a fingerprint-based records check pursuant to subsection (k) ¶¶ of this Section.
  - 4) That the applicant, if not hired conditionally, shall not be hired if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of

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the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the applicant's record is cleared based on a fingerprint-based records check pursuant to subsection (k) †† of this Section.

- 5) That the employee may be terminated if the criminal records report indicates that the employee has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the employee's record is cleared based on a fingerprint-based records check pursuant to subsection (k) †† of this Section. (Section 30(e) and (f) of the Health Care Worker Background Check Act)

†† A facility may conditionally employ an applicant to provide direct care for up to three months pending the results of a UCIA criminal history record check. (Section 30(g) of the Health Care Worker Background Check Act)

†† An applicant or employee whose non-fingerprint-based UCIA criminal history record check indicates a conviction for committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) of this Section may request that the facility or its designee commence a fingerprint-based UCIA criminal records check by submitting any necessary fees and information in a form and manner prescribed by the Department of State Police. (Section 35 of the Health Care Worker Background Check Act)

†† A facility having actual knowledge from a source other than a non-fingerprint check that an employee has been convicted of committing or attempting to commit one of the offenses enumerated in Section 25 of the Act must initiate a fingerprint-based background check within 10 working days after acquiring that knowledge. The facility may continue to employ that individual in a direct care position, may reassign that individual to a non-direct care position, or may suspend the individual until the results of the fingerprint-based background check are received. (Section 30(d) of the Health Care Worker Background Check Act)

†† An applicant, employee or employer may request a waiver to subsection (a), (b) or (c) of this Section by submitting the following to the Department within five working days after the receipt of the criminal records report:

- 1) A completed fingerprint-based UCIA criminal records check form (Section 40(a) of the Health Care Worker Background Check Act) (which the Department will forward to the Illinois State Police); and
  - 2) A certified check, money order or facility check made payable to the Department of State Police for the amount of money necessary to initiate a fingerprint-based UCIA criminal records check.
- †† The Department may accept the results of the fingerprint-based UCIA criminal records check instead of the items required by subsections (m)††(1) and (2) above. (Section 40(a-5) of the Health Care Worker Background Check Act)

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†† The Department may grant a waiver based on mitigating circumstances, which may include:

- 1) The age of the individual at which the crime was committed;
- 2) The circumstances surrounding the crime;
- 3) The length of time since the conviction;
- 4) The applicant's or employee's criminal history since the conviction;
- 5) The applicant's or employee's work history;
- 6) The applicant's or employee's current employment references;
- 7) The applicant's or employee's character references;
- 8) Nurse Aide Registry records; and
- 9) Other evidence demonstrating the ability of the applicant or employee to perform the employment responsibilities competently and evidence that the applicant or employee does not pose a threat to the health or safety of residents. (Section 40(b) of the Health Care Worker Background Check Act)

†† An individual shall not be employed in a direct care position from the time that the employee receives the results of a non-fingerprint check containing disqualifying conditions until the time that the individual receives a waiver from the Department. If the individual challenges the results of the non-fingerprint check, the employer may continue to employ the individual in a direct care position if the individual presents convincing evidence to the employer that the non-fingerprint check is invalid. If the individual challenges the results of the non-fingerprint check, his or her identity shall be validated by a fingerprint-based records check in accordance with subsection (k) of this Section. An individual may not be employed in a direct care position during the pendency of a waiver request. (Section 40(d) of the Health Care Worker Background Check Act)

†† A facility is not obligated to employ or offer permanent employment to an applicant, or to retain an employee who is granted a waiver. (Section 40(f) of the Health Care Worker Background Check Act)

†† A facility may retain the individual in a direct care position if the individual presents clear and convincing evidence to the facility that the non-fingerprint-based criminal records report is invalid and if there is a good faith belief on the part of the employer that the individual did not commit an offense listed in subsections (a)(1) to (27) of this Section, pending positive verification through a fingerprint-based criminal records check. Such evidence may include, but not be limited to:

- 1) certified court records;
- 2) written verification from the State's Attorney's office that prosecuted the conviction at issue;
- 3) written verification of employment during the time period during which the crime was committed or during the incarceration period stated in the report;
- 4) a signed affidavit from the individual concerning the validity of the report; or



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5) documentation from a local law enforcement agency that the individual was not convicted of a disqualifying crime.

slq† This Section shall not apply to:

- 1) An individual who is licensed by the Department of Professional Regulation or the Department of Public Health under another law of this State;
- 2) An individual employed or retained by a health care employer for whom a criminal background check is required by another law of this State; or
- 3) A student in a licensed health care field including, but not limited to, a student nurse, a physical therapy student, or a respiratory care student unless he or she is employed by a health care employer in a position with duties involving direct care for residents. (Section 20 of the Health Care Worker Background Check Act)

tl)†† An employer need not initiate an additional criminal background check for an employee if the employer initiated a criminal background check for the employee after January 1, 1996 and prior to January 1, 1998. This subsection applies only to persons employed prior to January 1, 1998. Any person newly employed on or after January 1, 1998 must receive a background check as required by Section 30 of the Health Care Worker Background Check Act. (Section 25.1 of the Health Care Worker Background Check Act)

ul)† The facility must send a copy of the results of the UCIA criminal history record check to the State Nurse Aide Registry for those individuals who are on the Registry. (Section 30(b) of the Health Care Worker Background Check Act) The facility shall include the individual's Social Security number on the criminal history record check results.

vl)†† The facility shall retain on file for a period of 5 years records of criminal records requests for all employees. The facility shall retain the results of the UCIA criminal history records check and waiver, if appropriate, for the duration of the individual's employment. The files shall be subject to inspection by the Department. A fine of \$500 shall be imposed for failure to maintain these records. (Section 50 of the Health Care Worker Background Check Act)

wl)† The facility shall maintain a copy of the employee's criminal history record check results and waiver, if applicable, in the personnel file or other secure location accessible to the Department.

(Source: Amended at 24 Ill. Reg. — 17-03-04, effective \_\_\_\_\_)

## Section 340.1378 Resident Attendants

a) As used in this Section, "resident attendant" means an individual who assists residents in a facility with the following activities:

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- 1) eating and drinking; and
- 2) personal hygiene limited to washing a resident's hands and face, brushing and combing a resident's hair, oral hygiene, shaving residents with an electric razor, and applying makeup. (Section 3-206.03(a) of the Act)

b) The term "resident attendant" does not include an individual who:

- 1) is a licensed health professional or a registered dietitian;
- 2) volunteers without monetary compensation;
- 3) is a nursing assistant; or
- 4) performs any nursing or nursing-related services for residents of a facility. (Section 3-206.03(b) of the Act)

c) A facility may employ resident attendants to assist the nurse aides with the activities authorized under subsection (a) of this Section. The resident attendants shall not count in the minimum staffing requirements under this Part. (Section 3-206.03(b) of the Act)

d) Each person employed by the facility as a resident attendant shall meet the following requirements:

- 1) Be at least 16 years of age; and
- 2) Be able to speak and understand the English language or a language understood by a substantial percentage of the facility's residents.

e) Resident attendants shall be supervised by and shall report to a nurse.

f) The facility shall develop and implement policies and procedures concerning the duties of resident attendants in accordance with this Section, and shall document such duties in a written job description.

g) As part of the comprehensive assessment, each resident shall be evaluated to determine whether the resident may or may not be fed, hydrated or provided personal hygiene by a resident attendant. Such evaluation shall include, but not be limited to, the resident's level of care; the resident's functional status in regard to feeding, hydration, and personal hygiene; and the resident's ability to cooperate and communicate with staff.

h) A facility may not use on a full-time or other paid basis any individual as a resident attendant in the facility unless the individual:

- 1) has completed a Department-approved training and competency evaluation program encompassing the tasks the individual provides; and
- 2) is competent to provide feeding, hydration, and personal hygiene services. (Section 3-206.03(c) of the Act) The individual shall be deemed to be competent if he/she is able to perform a hands-on return demonstration of the required skills, as determined by a nurse.

i) The facility shall maintain documentation of completion of the training program and determination of competency for each person employed as a resident attendant.

j) A facility-based training and competency evaluation program shall be



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conducted by a nurse and/or dietitian and shall include one or more of the following units:

- 1) *A feeding unit that is at least five hours in length and that is specific to the needs of the residents, and that includes the anatomy of digestion and swallowing; feeding techniques; developing an awareness of eating limitations; potential feeding problems and complications; resident identification; necessary equipment and materials; resident privacy; handwashing; use of disposable gloves; verbal and nonverbal communication skills; behavioral issues and management techniques; signs of choking; signs and symptoms of aspiration; and Heimlich maneuver;*
- 2) *A hydration unit that is at least three hours in length and that includes the anatomy of digestion and swallowing; hydration technique; resident identification; necessary equipment and materials; potential hydration problems and complications; verbal and nonverbal communication skills; behavioral issues and management techniques; use of disposable gloves; signs of choking; signs and symptoms of aspiration; handwashing; and resident privacy;*
- 3) *A personal hygiene unit that is at least five hours in length and includes oral hygiene technique, denture care, potential oral hygiene problems and complications; resident identification; verbal and nonverbal communication skills; behavioral issues and management techniques; resident privacy; handwashing; use of disposable gloves; hair combing and brushing; face and handwashing technique; necessary equipment and materials; shaving technique. (Section 3-206.03(d) of the Act)*
- k) All training shall also include a unit in safety and resident rights that is at least five hours in length and that includes resident rights; fire safety, use of a fire extinguisher, evacuation procedures; emergency and disaster preparedness; infection control; and use of the call system.
- l) Each resident attendant shall be given instruction by a nurse or dietitian concerning the specific feeding, hydration, and/or personal hygiene care needs of the resident whom he or she will be assigned to assist.
- m) *Training programs shall be reviewed and approved by the Department every two years. (Section 3-206.03(d) of the Act)*
- n) Training programs shall not be implemented prior to initial Department approval.
- o) Application for initial approval of facility-based and non-facility-based training programs shall be in writing and shall include:
  - 1) An outline containing the methodology, content, and objectives for the training program. The outline shall address the curriculum requirements set forth in subsection (j) of this Section for each unit included in the program;
  - 2) A schedule for the training program;

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- 3) Resumes describing the education, experience, and qualifications of each program instructor, including a copy of any valid Illinois licenses, as applicable; and
  - 4) A copy or description of the tools that will be used to evaluate competency.
- p) The Department will evaluate the initial application and proposed program for conformance to the program requirements contained in this Section. Based on this review, the Department will either:
- 1) Grant approval of the proposed program for a period of two years;
  - 2) Grant approval of the proposed program contingent on the receipt of additional materials, or revision, needed to remedy any minor deficiencies in the application or proposed program, which would not prevent the program from being implemented, such as deficiencies in the number of hours assigned to cover different areas of content, which can be corrected by submitting a revised schedule or outline; or
  - 3) Deny approval of the proposed program based on major deficiencies in the application or proposed program, which would prevent the program from being implemented, such as deficiencies in the qualifications of instructors or missing areas of content.
- q) Programs shall be resubmitted to the Department for review within 60 days prior to expiration of program approval.
- r) If the Department finds that an approved program does not comply with the requirements of this Section, the Department will notify the facility in writing of non-compliance of the program and the reason for the finding.
- s) If the Department finds that any conditions stated in the written notice of non-compliance issued under subsection (r) of this Section have not been corrected within 30 days after the date of issuance of such notice, the Department will revoke its approval of the program. Any change in program content or objectives shall be submitted to the Department at least 30 days prior to program delivery. The Department will review the proposed change based on the requirements of this Section and will either approve or disapprove the change. The Department will notify the facility in writing of the approval or disapproval.
- u) *A person seeking employment as a resident attendant is subject to the Health Care Worker Background Check Act (Section 3-206.03(f) of the Act) and Section 340.1377 of this Part.*

(Source: Added at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART F: RESIDENT LIVING SERVICES

## Section 340.1700 Recreational and Activity Programs

- a) The facility shall provide an ongoing program of recreational and

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activity services as necessary to meet the interests and preferences and physical, mental and psychosocial well-being of each resident, in accordance with the resident's comprehensive assessment needs of the residents. These services shall be coordinated with other services and programs provided the residents, in order to make fullest possible use of both community and facility resources and to benefit maximize benefits to the residents.

- b) Activity personnel shall be provided to meet the needs of the residents and the program. Activity staff time each week shall total not less than 45 minutes multiplied by the number of residents in the facility. This time shall be spent in providing activity programming as well as planning and directing the program. The time spent in the performance of other duties not related to the activity program shall not be counted as part of the required activity staff time. There shall be a specific planned program of group and individual activities designed to encourage habitation or restoration to self-care and maintenance of normal activity that is geared to the individual resident's needs. Activities shall be available daily and for a reasonable amount of time, taking into account individuals' past interests and the development of new interests. Residents shall be given an opportunity to contribute to planning, preparing, conducting, cleaning up, and critiquing of the program.

- 1) In a facility whose residents participate in regularly scheduled therapeutic programs outside the facility, such as school, employment or sheltered workshop, the minimum hours per week of activity staff time may be reduced. The reduction shall be calculated by multiplying the number of residents in the facility who participate in such programs by the percentage of the day that these residents spend in such programs.

- 2) Activity personnel working under the direction of the activity director shall have a minimum of 10 hours of in-service training per calendar or employment year, directly related to recreation/activities. In-service training may be provided by qualified facility staff and/or consultants, or may be obtained from college or university courses, seminars and/or workshops, educational offerings through professional organizations, similar educational offerings or any combination thereof.

- c) Where shall be written permission, with any contraindications stated, given by the resident's physician for the resident to participate in the activity program. Standing orders will be acceptable with individual contraindications noted.

- d) Activity program supplies and equipment shall be provided in sufficient quantity and variety to carry out the activity program objectives and to maintain an ongoing program to meet the varied interests and needs of the residents. These shall include, but are not limited to, games, craft supplies, current magazines, books, radio, television, and record or tape player. A piano or organ is recommended as an important adjunct to the activity program equipment.

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- c) Activity Director and Consultation  
1) A where shall be a trained staff person shall be designated as activity director and shall be responsible for planning and directing the activities program. This person shall be regularly scheduled to be on duty in the facility at least four days per week on duty for a sufficient amount of time to provide a program that meets the residents' needs and interests. Additional activity personnel shall be provided as necessary to meet the needs of the residents and the program.

- 2) If the activity director this person is not a Certified Therapeutic Recreation Specialist (CTRS), Occupational Therapist Registered and Licensed (OTR/L), or a Licensed Social Worker (LSW) or Licensed Clinical Social Worker (LCSW) who has Registered Occupational Therapist, a Therapeutic Recreation Specialist, or a Certified Social Worker with specialized course work coursework in social group work, the facility shall have a written agreement with a person from one of those disciplines to provide consultation to the activity director. Activity Director at least monthly, in order to ensure make sure that the activity programming meets the needs of the residents of the facility.

- 3) Any person designated as activity director hired after November 1, 2000, shall have a high school diploma or equivalent.  
4) Except for individuals qualified as a CTRS, OTR/L, LSW or LCSW as listed in subsection (c)(2) of this Section, any person hired as an activity director after November 1, 2000 shall have taken a 36-hour basic orientation course or shall register to take a 36-hour basic orientation course within 90 days after employment and shall complete the course within 180 days after employment. This course shall be recognized by an accredited college or university or a nationally recognized continuing education sponsor following the guidelines of the International Association for Continuing Education and Training and include at least the following: resident rights; activity care planning for quality of life, human wellness and self-esteem; etiology and symptomatology of persons who are aged, developmentally disabled or mentally ill; therapeutic approaches; philosophy and design of activity programs; activity program resources; program evaluation; practitioner behavior and ethics; resident assessment and supportive documentation; standards and regulations concerning activity programs; management and administration. Individuals who have previously taken a 36-hour basic orientation course, a 42-hour basic activity course or a 90-hour basic education course shall be considered to have met this requirement.  
5) The activity director shall have a minimum of ten hours of continuing education per year pertaining to activity programming.  
6) Consultation shall be required only quarterly when the activity director meets or exceeds the following criteria:



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- A) High school diploma or equivalent, five years of full-time or 10,000 hours of part-time experience in activities, three years of experience as an activity director, and completion of a basic orientation course of at least 36 hours; or
- B) A two-year associate's degree, three years of full-time or 6,000 hours of part-time experience in activities, three years of experience as an activity director, and completion of a basic orientation course of at least 36 hours; or
- C) A four-year degree, one year full-time or 2,000 hours of part-time experience in activities, one year of experience as an activity director, and completion of a basic orientation course of at least 36 hours.
- d) Written permission, with any contraindications stated, shall be given by the resident's physician if the resident participates in the activity program. Standing orders will be acceptable with individual contraindications noted.
- e) Activity program staff shall participate in the assessment of each resident, which shall include the following:
- 1) Background information, including education level, cultural/social issues, and spiritual needs;
  - 2) Current functional status, including communication status, physical functioning, cognitive abilities, and behavioral issues; and
  - 3) Leisure functioning, including attitude toward leisure, awareness of leisure resources, knowledge of activity skills, and social interaction skills and activity interests, both current and past.
- f) The activity staff shall participate in the development of an individualized plan of care addressing needs and interests of the residents, including activity/recreational goals and/or interventions.
- g) The facility shall provide a specific, planned program of individual (including self-initiated) and group activities that are aimed at improving, maintaining, or minimizing decline in the resident's functional status, and at promoting well-being. The program shall be designed in accordance with the individual resident's needs, based on past and present lifestyle, cultural/ethnic background, interests, capabilities, and tolerance. Activities shall be daily and shall reflect the schedules, choices, and rights of the residents (e.g., morning, afternoon, evenings and weekends). The residents shall be given opportunities to contribute to planning, preparing, conducting, concluding and evaluating the activity program.
- g) The activity program should include at a minimum the following program areas:
- 1) Recreational activities (examples:--games, both quiet and active; parties; picnics; outside entertainment);
  - 2) Arts and Crafts (applicable for the needs and interests of the residents);
  - 3) Religious activities (examples:--Bible study or discussion; Bible quizzes--and--games; hymn--singing;--These are--in addition to

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- routine religious services;
- 4) Service activities for community or facility (examples:--assist with community fund drives; projects for community or facility; helping to fold linen);
- 5) Intellectual and educational activities (examples:--classes in writing, arithmetic, grooming, and social graces; cooking or food preparation; planned group discussion; quizzes and word games; newsletter);
- 6) Community activities (examples:--residents' participation in community activities such as plays, clubs, eating out; church events; band concerts; and tours);
- h) Documentation of resident's response to programs shall be part of the resident's record.
- h) The activity program shall be multifaceted and shall reflect each individual resident's needs and be adapted to the resident's capabilities. The activity program philosophy shall encompass programs that provide stimulation or solace; promote physical, cognitive and/or emotional health; enhance, to the extent practicable, each resident's physical and mental status; and promote each resident's self-respect by providing, for example, activities that support self-expression and choice. Specific types of activities may include:
- 1) Physical activity (e.g., exercise, fitness, adapted sports);
  - 2) Cognitive stimulation/intellectual/educational activity (e.g., discussion groups, reminiscence, guest speakers, films, trivia, quizzes, table games, puzzles, writing, spelling, newsletter);
  - 3) Spiritual/religious activity (e.g., religious services, spiritual study groups, visits from spiritual support groups);
  - 4) Service activity (e.g., volunteer work for the facility, other individuals and/or the community);
  - 5) Sensory stimulation (e.g., tactile, olfactory, auditory, visual and gustatory);
  - 6) Community involvement (e.g., community groups coming into the facility for intergenerational programs, special entertainment and volunteer visits; excursions outside the facility to museums, sporting events, entertainment, parks);
  - 7) Expressive and creative arts/crafts (adapted to the resident's capabilities), music, movement/dance, horticulture, pet-facilitated therapy, drama, literary programs, art, cooking;
  - 8) Family involvement (e.g., correspondence, family parties, holiday celebrations, family volunteers); and
  - 9) Social activity (e.g., parties and seasonal activities).
- i) If residents participate in regularly scheduled therapeutic programs outside the facility (e.g., school, employment, or sheltered workshop), the residents' needs for activities while they are in the facility shall be met.
- j) Residents' participation in and response to the activity program shall be documented at least quarterly and included in the clinical record.



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The facility shall maintain current records of resident participation in the activity program.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 340.1730 Volunteer Program

a) If the facility has a volunteer or auxiliary program, a facility staff person shall direct the program. Community groups such as Boy and Girl Scouts, church groups and civic organizations that may occasionally present programs, activities, or entertainment in the facility shall not be considered volunteers for the purposes of this Section.

b) Volunteers shall complete a standard orientation program, in accordance with their facility responsibilities and with the facility's policies and procedures governing the volunteer program. The orientation shall include, but not be limited to:

- 1) Residents' rights;
- 2) Confidentiality;
- 3) Disaster preparedness (i.e., fire, tornado);
- 4) Emergency response procedures;
- 5) Safety procedures/precautions;
- 6) Infection control; and
- 7) Body mechanics.

c) Volunteers shall respect all aspects of confidentiality.

d) Volunteers shall be informed of and shall implement medical and physical precautions related to the residents with whom they work.

e) Volunteers shall not take the place of qualified staff (e.g., activity professionals, nursing assistants, or case workers).

(Source: Added at 24 Ill. Reg. 17 2 2 5, effective NOV 11 2000)

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1) Heading of the Part: Intermediate Care for the Developmentally Disabled Facilities Code

2) Code Citation: 77 Ill. Adm. Code 350

3) Section Numbers: Adopted Action:

350.160	Amendment
350.290	Repealer
350.681	Amendment
350.682	New Section
350.820	Amendment
350.1050	Amendment
350.1055	New Section

4) Statutory Authority: Nursing Home Care Act [210 ILCS 45]

5) Effective date of amendments: November 1, 2000

6) Does this rulemaking contain an automatic repeal date? No

7) Does this rulemaking contain any incorporations by reference? No

8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal was Published in Illinois Register: March 24, 2000 - 24 Ill. Reg. 4816

10) Has JCAR issued a Statement of Objection to this rulemaking? No

11) Difference between proposal and final version:

The following changes were made in response to comments received during the first notice or public comment period:

1. In the table of contents, the heading of Section 350.1055, "Programs" was changed to "program".

2. In Section 350.681(e), a comma was added after "determination".

3. In Section 350.682(a)(2), (b)(4), and (c), "30206.3(a)" was changed to "3-206.03(a)".

4. The following was added in Section 350.1050(b)(1): "In a facility of 16 or fewer residents, the Qualified Mental Retardation Professional (QMRF) may serve as the Activity Director."

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5. In Section 350.1050(b)(1), "day" was changed to "days"; "duty" was added after "on".
6. In Section 350.1050(b)(3), "October" was changed to "November".
7. In Section 350.1050(b)(2), "licensed Social Worker (LSW) or" was added after "or a".
8. In Section 350.1050(d), "if" was added and "for" was stricken; "participates" was added and "to participate" was stricken.
9. In Section 350.1050(e), "A" was changed to "An" and "comprehensive" was deleted.
10. In Section 350.1050(i), "participation" was changed to "participate".
11. In Section 350.1050(i), "while they are in the facility" was added after "activities".
12. In Section 350.1050(i), "while they are in the facility" was deleted.
13. In Section 350.1050(b), "comprehensive" was deleted.
14. In Section 350.1050(b)(4), "Council of Accreditation of Continuing Education Units" was changed to "Association for Continuing Education and Training".
15. In Section 350.1050(b)(4), "160" was changed to "180".
16. In Section 350.1050(b)(4), "previously" was added between "have" and "taken".
17. In Section 350.1050(b)(4), "sponsored . . . Professionals" was deleted.
18. In Section 350.1050(a), "the" was deleted; "fullest" was stricken.
19. In Section 350.1050(a), "possible" was stricken.
20. In Section 350.1050(a), "maximize" was stricken; "the" was deleted; "benefit" was added; "benefit to" was stricken.
21. In Section 350.1050(b)(4), "after November 1, 2000" was added after "director".
22. In Section 350.1050(b)(4), "guidelines of the" was added after "the".
23. In Section 350.1050(b)(4), "36-hour basic orientation course, a" was

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- added after "taken a".
  24. In Section 350.1050(c), "Habilitation aides and" was deleted; "activity" was changed to "Activity".
  25. In Section 350.1050(c), the following was added after the period: "Habilitation aides who provide activities to residents shall also meet this requirements."
- The following changes were made in response to comments and suggestions of JCAR:
1. In Section 350.681(p), "10" was stricken and "40" was added.
  2. In Section 350.682(h)(2), "a" was added after "perform".
  3. In Section 350.682(j)(1), (2), and (3), "necessary" was added before "equipment".
  4. In Section 350.1050(a), "and preferences" was added after "interests".
  5. In Section 350.1050(b)(2), "Activity Director" was changed to "activity director".
  6. In Section 350.1050(b)(4), "qualified as a CTRS, OTR/L, LSW or LCSW as" was added after "individuals".
  7. In Section 350.1050(b)(4), the comma after "programs" was changed to a semi-colon.
  8. In Section 350.1050(c), "requirements" was changed to "requirement".
  9. In Section 350.1050(h)(1), "stimulation" was changed to "stimulation".
- In addition, various typographical, grammatical and form changes were made in response to the comments from JCAR.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? All agreed-upon changes have been made.
  - 13) Will these amendments replace emergency amendments currently in effect?  
No
  - 14) Are there any other amendments pending on this Part? Yes
- |                 |                 |                    |
|-----------------|-----------------|--------------------|
| Section Numbers | Proposed Action | Ill. Reg. Citation |
| 350.1223        | Amendment       | 24 Ill. Reg. 13273 |

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15) Summary and purpose of the amendments:

Section 350.160 (Issuance of a Renewal License) is amended to conform language concerning license renewal to the language of Section 3-115 of the Act, as amended by Public Act 91-215, effective July 20, 1999.

Section 350.290 (Quarterly List of Violators) is repealed because it is primarily statutory language that directs the Department. Repeal of this Section will not affect the Department's statutory obligation to prepare a quarterly list of violators.

Section 350.681 (Health Care Worker Background Check) is amended to implement P.A. 91-598 (effective January 1, 2000). A facility will be prohibited from hiring, employing or retaining a person with direct care duties if the facility becomes aware that the individual has been convicted in another state of committing or attempting to commit an offense that has the same or similar elements as a disqualifying crime under the Health Care Worker Background Check Act, as verified by court records, records from a State agency, or an FBI criminal history record check. The facility is not, however, obligated to conduct background checks in other states in which an employee has resided. The definition of "direct care" is amended, and guidelines are included to assist facilities in determining which employees provide direct care. The rules are also amended to clarify the status of employees during the waiver process.

Section 350.682 (Resident Attendants) is added to implement Public Act 91-461, effective August 6, 1999. This legislation allows facilities to employ resident attendants to assist residents with eating, drinking, and personal hygiene. The amendments include requirements for resident attendant training and competency and for assessment of residents to determine which residents can be assisted by resident attendants.

Section 350.820 (Consultation Services) is amended to delete consultation requirements for activity directors, which will be included in Section 350.1050.

Section 350.1050 (Activity Program) is substantially revised to enhance activity programs for long-term care residents. Activity personnel working under the direction of the activity director will be required to have a minimum of 6 hours of in-service training per calendar year or employment year, directly related to recreation/activities. Requirements for consultation and training for activity directors are included, as well as requirements for an assessment of each resident and participation in habilitation planning by activity staff. Examples of specific types of activities are included. Section 350.1055 (Volunteer Program) is added to set forth requirements for volunteer programs, including an orientation program.

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16) Information and questions regarding these adopted amendments shall be directed to:

Paul Thompson  
Division of Legal Services  
Department of Public Health  
535 West Jefferson, Fifth Floor  
Springfield, Illinois 62761  
217/782-2043  
e-mail: rules@dph.state.il.us

The full text of the adopted amendments begins on the next page:



## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF ADOPTED AMENDMENTS

## TITLE 77: PUBLIC HEALTH

## CHAPTER I: DEPARTMENT OF PUBLIC HEALTH

## SUBCHAPTER c: LONG-TERM CARE FACILITIES

## PART 350

## INTERMEDIATE CARE FOR THE DEVELOPMENTALLY DISABLED FACILITIES CODE

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AUTHORITY: Implementing and authorized by the Nursing Home Care Act [210 ILCS 45].

SOURCE: Emergency rules adopted at 4 Ill. Reg. 10, p. 495, effective March 1,



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1980, for a maximum of 150 days; amended at 4 Ill. Reg. 30, p. 1, effective July 28, 1980; amended at 5 Ill. Reg. 1657, effective February 4, 1981; amended at 6 Ill. Reg. 5981, effective May 3, 1982; amended at 6 Ill. Reg. 6453, effective May 14, 1982; amended at 6 Ill. Reg. 8198, effective June 29, 1982; amended at 6 Ill. Reg. 14544, effective November 8, 1982; amended at 6 Ill. Reg. 14675, effective November 15, 1982; amended at 6 Ill. Reg. 15556, effective December 15, 1982; amended at 7 Ill. Reg. 278, effective December 22, 1982; amended at 7 Ill. Reg. 1919 and 1945, effective January 28, 1983; amended at 7 Ill. Reg. 7963, effective July 1, 1983; amended at 7 Ill. Reg. 15817, effective November 15, 1983; amended at 7 Ill. Reg. 16984, effective December 14, 1983; amended at 8 Ill. Reg. 15574 and 15578 and 15581, effective August 15, 1984; amended at 8 Ill. Reg. 15935, effective August 17, 1984; amended at 8 Ill. Reg. 16980, effective September 5, 1984; codified at 8 Ill. Reg. 19806; amended at 8 Ill. Reg. 24214, effective November 29, 1984; amended at 8 Ill. Reg. 24680, effective December 7, 1984; amended at 9 Ill. Reg. 142, effective December 26, 1984; amended at 9 Ill. Reg. 331, effective December 28, 1984; amended at 9 Ill. Reg. 2964, effective February 25, 1985; amended at 9 Ill. Reg. 10876, effective July 1, 1985; amended at 11 Ill. Reg. 14795, effective October 1, 1987; amended at 11 Ill. Reg. 16830, effective October 1, 1987; amended at 12 Ill. Reg. 979, effective December 24, 1987; amended at 12 Ill. Reg. 16838, effective October 1, 1988; emergency amendment at 12 Ill. Reg. 18705, effective October 24, 1988, for a maximum of 150 days; emergency expired March 23, 1989; amended at 13 Ill. Reg. 6040, effective April 17, 1989; amended at 13 Ill. Reg. 19451, effective December 1, 1989; amended at 14 Ill. Reg. 14876, effective October 1, 1990; amended at 15 Ill. Reg. 466, effective January 1, 1991; amended at 16 Ill. Reg. 594, effective January 1, 1992; amended at 16 Ill. Reg. 13910, effective September 1, 1992; amended at 17 Ill. Reg. 2351, effective February 10, 1993; emergency amendment at 17 Ill. Reg. 2373, effective February 3, 1993, for a maximum of 150 days; emergency expired on July 3, 1993; emergency amendment at 17 Ill. Reg. 7948, effective May 6, 1993, for a maximum of 150 days; emergency expired on October 3, 1993; emergency amendment at 17 Ill. Reg. 9105, effective June 7, 1993, for a maximum of 150 days; emergency expired on November 4, 1993; amended at 17 Ill. Reg. 15056, effective September 3, 1993; amended at 17 Ill. Reg. 16153, effective January 1, 1994; amended at 17 Ill. Reg. 19210, effective October 26, 1993; amended at 17 Ill. Reg. 19517, effective November 4, 1993; amended at 17 Ill. Reg. 21017, effective November 20, 1993; amended at 18 Ill. Reg. 1432, effective January 14, 1994; amended at 18 Ill. Reg. 15789, effective October 15, 1994; amended at 19 Ill. Reg. 11481, effective July 29, 1995; emergency amendment at 20 Ill. Reg. 512, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 10065, effective July 15, 1996; amended at 20 Ill. Reg. 12049, effective September 10, 1996; amended at 21 Ill. Reg. 14990, effective November 15, 1997; amended at 22 Ill. Reg. 4040, effective February 13, 1998; amended at 22 Ill. Reg. 7172, effective April 15, 1998; amended at 22 Ill. Reg. 16557, effective September 18, 1998; amended at 23 Ill. Reg. 1052, effective January 15, 1999; amended at 23 Ill. Reg. 7970, effective July 15, 1999; amended at 24 Ill. Reg. 17754, effective

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## SUBPART A: GENERAL PROVISIONS

## Section 350.160 Issuance of a Renewal License

At least 120 days, but not more than 150 days, prior to license expiration, the licensee shall submit an application for renewal of the license in such form and containing such information as the Department requires. If the application is approved, and the facility is in compliance with all other licensure requirements, the license shall be renewed in accordance with Section 3-110 of the Act. (Section 3-115 of the Act)

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 350.290 Quarterly List of Violators (Repealed)

- a) The Department shall prepare on a quarterly basis a list containing the names and addresses of all facilities against which the Department during the previous quarter has:
- 1) issued a notice of penalty assessment for a level A violation as provided in Section 350-286 of this Part and Section 3-305(i) of the Act;
  - 2) issued a notice of revocation of the facility's license as provided in Section 350-180 of this Part and Section 3-119 of the Act;
  - 3) issued a notice refusing renewal of the facility's license as provided in Section 350-175 of this Part and Section 3-119 of the Act;
  - 4) issued a notice to suspend the facility's license as provided in Section 3-119 of the Act;
  - 5) issued a conditional license to the facility based on violations which were not corrected as provided in Section 350-260 of this Part and Section 3-313 of the Act, except where terms of the conditional license have been stayed pursuant to Section 350-260(d);
  - 6) placed a monitor in the facility as provided in Section 350-270 of this Part and Section 3-501 of the Act for one of the following reasons:
    - A) the facility is operating without a license;
    - B) the Department has revoked or refused to renew the license of the facility;
    - C) the facility is closing or has informed the Department that it intends to close and adequate arrangements for relocation of residents have not been made at least 30 days prior to closure;
    - D) the Department determines that an emergency exists and has issued a notice of revocation or nonrenewal against the facility's license.

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- 7) Initiated an action to appoint a receiver;  
8) Recommended to the Director of the Department of Public Aid or the Secretary of the United States Department of Health and Human Services, the decertification for violations in relation to patient care of a facility pursuant to Titles XVII and XIX of the Federal Social Security Act; (42 U.S.C. 1395-et seq. and 1396 et seq.); (Section 3-304(a) of the Act)  
b) In addition to the name and address of the facility, the list shall include the name and address of the person or licensee against whom the action has been initiated, a self-explanatory summary of the facts which warranted the initiation of each action, the type of action initiated, the date of the initiation of the action, the amount of the penalty sought to be assessed, if any, and the final disposition of the action, if completed; (Section 3-304(b) of the Act)

(Source: Repealed at 24 Ill. Reg. 17264, effective 1/1/84.)

## SUBPART C: POLICIES

## Section 350.681 Health Care Worker Background Check

- a) The facility shall not knowingly hire any individual in a position with duties involving direct care for residents if that person has been convicted of committing or attempting to commit one or more of the following offenses (Section 25(a) of the Health Care Worker Background Check Act [225 ILCS 46/25]):
- 1) Solicitation of murder, solicitation of murder for hire (Sections 8-1.1 and 8-1.2 of the Criminal Code of 1961 [720 ILCS 5/8-1.1 and 8-1.2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 8-1.1 and 8-1.2));
  - 2) Murder, homicide, manslaughter or concealment of a homicidal death (Sections 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2 and 9-3.3 of the Criminal Code of 1961 [720 ILCS 5/9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2 and 9-3.3); Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 3, 236, 358, 360, 361, 362, 363, 364, 364a, 365, 370, 373, 373a, 417, and 474);
  - 3) Kidnaping or child abduction (Sections 10-1, 10-2, 10-5 and 10-7 of the Criminal Code of 1961 [720 ILCS 5/10-1, 10-2, 10-5, and 10-7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-1, 10-2, 10-5, and 10-7); Ill. Rev. Stat. 1985, ch. 38, par. 10-6; Ill. Rev. Stat. 1961, ch. 38, pars. 384 to 386));
  - 4) Unlawful restraint or forcible detention (Sections 10-3, 10-3.1, and 10-4 of the Criminal Code of 1961 [720 ILCS 5/10-3, 10-3.1, and 10-4] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-3, 10-3.1, and 10-4); Ill. Rev. Stat. 1961, ch. 38, pars. 252, 252.1,

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- and 252.4));
- 5) Indecent solicitation of a child, sexual exploitation of a child, exploitation of a child, child pornography (Sections 11-6, 11-9.1, 11-19.2, and 11-20.1 of the Criminal Code of 1961 [720 ILCS 5/11-6, 11-9.1, 11-19.2, and 11-20.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-6, 11-19.2, and 11-20.1); Ill. Rev. Stat. 1983, ch. 38, par. 11-20a; Ill. Rev. Stat. 1961, ch. 38, pars. 103 and 104);
  - 6) Assault, battery, heinous battery, tampering with food, drugs or cosmetics or infliction of great bodily harm (Sections 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7 of the Criminal Code of 1961 [720 ILCS 5/12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7); Ill. Rev. Stat. 1961, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 55, 56, and 56a to 60b);
  - 7) Aggravated stalking (Section 12-7.4 of the Criminal Code of 1961 [720 ILCS 5/12-7.4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-7.4));
  - 8) Home invasion (Section 12-11 of the Criminal Code of 1961 [720 ILCS 5/12-11] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-11));
  - 9) Sexual assault or sexual abuse (Sections 12-13, 12-14, 12-14.1, 12-15, and 12-16 of the Criminal Code of 1961 [720 ILCS 5/12-13, 12-14, 12-14.1, 12-15, and 12-16] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-1, 11-2, 11-3, 11-4, 11-5, 12-13, 12-14, 12-15, and 12-16); Ill. Rev. Stat. 1985, ch. 38, pars. 11-1, 11-4, and 11-4.1; Ill. Rev. Stat. 1961, ch. 38, pars. 109, 141, 142, 490, and 491);
  - 10) Abuse or gross neglect of a long-term care facility resident (Section 12-19 of the Criminal Code of 1961 [720 ILCS 5/12-19] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-19));
  - 11) Criminal neglect of an elderly or disabled person (Section 12-21 of the Criminal Code of 1961 [720 ILCS 5/12-21] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-21));
  - 12) Endangering the life or health of a child (Section 12-21.6 of the Criminal Code of 1961 [720 ILCS 5/12-21.6] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354; Ill. Rev. Stat. 1961, ch. 38, par. 95));
  - 13) Ritual mutilation, ritualized abuse of a child (Sections 12-32 and 12-33 of the Criminal Code of 1961 [720 ILCS 5/12-32 and 12-33] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-32 and 12-33));
  - 14) Theft, retail theft (Sections 16-1 and 16A-3 of the Criminal Code of 1961 [720 ILCS 5/16-1 and 16A-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 16-1 and 16A-3); Ill. Rev. Stat. 1961, ch. 38,

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pars. 62, 207 to 218, 240 to 244, 246, 253, 254.1, 258, 262, 262a, 273, 290, 291, 301a, 354, 387 to 388b, 389, 393 to 400, 404a to 404c, 438, 492 to 496));

15) Financial exploitation of an elderly or disabled person (Section 16-1.3 of the Criminal Code of 1961 [720 ILCS 5/16-1.3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 16-1.3));

16) Forgery (Section 17-3 of the Criminal Code of 1961 [720 ILCS 5/17-3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 17-3; Ill. Rev. Stat. 1961, ch. 38, pars. 151 and 277 to 286));

17) Robbery, armed robbery (Sections 18-1 and 18-2 of the Criminal Code of 1961 [720 ILCS 5/18-1 and 18-2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 18-1 and 18-2));

18) Vehicular hijacking, aggravated vehicular hijacking, aggravated robbery (Sections 18-3, 18-4, and 18-5 of the Criminal Code of 1961 [720 ILCS 5/18-3, 18-4, and 18-5]);

19) Burglary, residential burglary (Sections 19-1 and 19-3 of the Criminal Code of 1961 [720 ILCS 5/19-1 and 19-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 19-1 and 19-3; Ill. Rev. Stat. 1961, ch. 38, pars. 84 to 86, 88, and 501));

20) Criminal trespass to a residence (Section 19-4 of the Criminal Code of 1961 [720 ILCS 5/19-4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 19-4));

21) Arson (Sections 20-1 and 20-1.1 of the Criminal Code of 1961 [720 ILCS 5/20-1 and 20-1.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 20-1 and 20-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 48 to 53 and 236 to 238));

22) Unlawful use of weapons, aggravated discharge of a firearm, or reckless discharge of a firearm (Sections 24-1, 24-1.2, and 24-1.5 of the Criminal Code of 1961 [720 ILCS 5/24-1, 24-1.2, and 24-1.5] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 24-1 and 24-1.2; Ill. Rev. Stat. 1961, ch. 38, pars. 152, 152a, 155, 155a to 158b, 414a to 414c, 414e, and 414g));

23) Armed violence - elements of the offense (Section 33A-2 of the Criminal Code of 1961 [720 ILCS 5/33A-2] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 33A-2));

24) Those provided in Section 4 of the Wrongs to Children Act (Section 4 of the Wrongs to Children Act [720 ILCS 150/4] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354));

25) Cruelty to children (Section 53 of the Criminal Jurisprudence Act [720 ILCS 115/531] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2368));

26) Manufacture, delivery or trafficking of cannabis, delivery of cannabis on school grounds, or delivery to person under 18; violation by person under 18 (Sections 5, 5.1, 5.2, 7, and 9 of the Cannabis Control Act [720 ILCS 550/5, 5.1, 5.2, 7, and 9] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 705, 705.1, 705.2, 707, and 709)); or

27) Manufacture, delivery or trafficking of controlled substances

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(Sections 401, 401.1, 404, 405, 405.1, 407 and 407.1 of the Illinois Controlled Substances Act [720 ILCS 570/401, 401.1, 404, 405, 405.1, 407 and 407.1] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 401, 401.1, 404, 405, 405.1, 407, and 407.1)).

b) The facility shall not knowingly employ or retain any individual in a position with duties involving direct care for residents if that person has been convicted of committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) of this Section unless the applicant, employee or employer obtains a waiver pursuant to subsections (m)(4) and (o)(4) of this Section. (Section 25(a) of the Health Care Worker Background Check Act)

c) A facility shall not hire, employ, or retain any individual in a position with duties involving direct care of clients, patients, or residents if the health care employer becomes aware that the individual has been convicted in another state of committing or attempting to commit an offense that has the same or similar elements as an offense listed in subsections (a)(1) to (27) of this Section, as verified by court records, records from a State agency, or an FBI criminal history record check. This shall not be construed to mean that a health care employer has an obligation to conduct a criminal history records check in other states in which an employee has resided. (Section 25(b) of the Act)

d) For the purpose of this Section:

1) "Applicant" means an individual seeking employment with a facility who has received a bona fide conditional offer of employment.

2) "Conditional offer of employment" means a bona fide offer of employment by a facility to an applicant, which is contingent upon the receipt of a report from the Department of State Police indicating that the applicant does not have a record of conviction of any of the criminal offenses listed in subsections (a)(1) to (27) of this Section.

3) "Direct care" means the provision of nursing care or assistance with feeding meals, dressing, movement, bathing, or other personal needs, or maintenance, or general supervision, and oversight of the physical and mental well-being of an individual who is incapable of managing his or her person whether or not a guardian has been appointed for that individual.

4) "Initiate" means the obtaining of the authorization for a record check from a student, applicant, or employee. (Section 15 of the Health Care Worker Background Check Act)

e) For purposes of the Health Care Worker Background Check Act, the facility shall establish a policy defining which employees provide direct care. In making this determination, the facility shall consider the following:

1) The employee's assigned job responsibilities as set forth in the employee's job description;

2) Whether the employee is required to or has the opportunity to be



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alone with residents, with the exception of infrequent or unusual occasions; and

3) Whether the employee's responsibilities include physical contact with residents, for example to provide therapy or to draw blood.

f) d Beginning January 1, 1996, when the facility makes a conditional offer of employment to an applicant who is not exempt under subsection (s) t of this Section for a position with duties that involve direct care for residents, the employer shall inquire of the Nurse Aide Registry as to the status of the applicant's Uniform Conviction Information Act (UCIA) criminal history record check. If a UCIA criminal history record check has not been conducted within the last 12 months, the facility must initiate or have initiated on its behalf a UCIA criminal history record check for that applicant. (Section 30(c) of the Health Care Worker Background Check Act)

g) e The facility shall transmit all necessary information and fees to the Illinois State Police within 10 working days after receipt of the authorization. (Section 15 of the Health Care Worker Background Check Act)

h) f The facility may accept an authentic UCIA criminal history record check that has been conducted within the last 12 months rather than initiating a check as required in subsection (f) d of this Section.

i) g The request for a UCIA criminal history record check shall be made as prescribed by the Department of State Police. The applicant or employee must be notified of the following whenever a non-fingerprint-based UCIA criminal history record check is made:

1) That the facility shall request or have requested on its behalf a non-fingerprint-based UCIA criminal history record check pursuant to the Health Care Worker Background Check Act.

2) That the applicant or employee has a right to obtain a copy of the criminal records report from the facility, challenge the accuracy and completeness of the report, and request a waiver in accordance with subsection (m) t of this Section.

3) That the applicant, if hired conditionally, may be terminated if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a) (1) to (27) of this Section unless the applicant's identity is validated and it is determined that the applicant or employee does not have a disqualifying criminal history record based on a fingerprint-based records check pursuant to subsection (k) t of this Section.

4) That the applicant, if not hired conditionally, shall not be hired if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a) (1) to (27) of this Section unless the applicant's record is cleared based on a fingerprint-based records check pursuant to subsection (k) t of this Section.

5) That the employee may be terminated if the criminal records

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report indicates that the employee has a record of conviction of any of the criminal offenses enumerated in subsections (a) (1) to (27) of this Section unless the employee's record is cleared based on a fingerprint-based records check pursuant to subsection (k) t of this Section. (Section 30(e) and (f) of the Health Care Worker Background Check Act)

j) h A facility may conditionally employ an applicant to provide direct care for up to three months pending the results of a UCIA criminal history record check. (Section 30(g) of the Health Care Worker Background Check Act)

k) i An applicant or employee whose non-fingerprint-based UCIA criminal history record check indicates a conviction for committing or attempting to commit one or more of the offenses listed in subsections (a) (1) to (27) of this Section may request that the facility or its designee commence a fingerprint-based UCIA criminal records check by submitting any necessary fees and information in a form and manner prescribed by the Department of State Police. (Section 35 of the Health Care Worker Background Check Act)

l) j A facility having actual knowledge from a source other than a non-fingerprint check that an employee has been convicted of committing or attempting to commit one of the offenses enumerated in Section 25 of the Act must initiate a fingerprint-based background check within 10 working days after acquiring that knowledge. The facility may continue to employ that individual in a direct care position, may reassign that individual to a non-direct care position, or may suspend the individual until the results of the fingerprint-based background check are received. (Section 30(d) of the Health Care Worker Background Check Act)

m) k An applicant, employee or employer may request a waiver to subsection (a) i, or (b) or (c) of this Section by submitting the following to the Department within five working days after the receipt of the criminal records report:

1) A completed fingerprint-based UCIA criminal records check form (Section 40(a) of the Health Care Worker Background Check Act) (which the Department will forward to the Department of State Police); and

2) A certified check, money order or agency check made payable to the Department of State Police for the amount of money necessary to initiate a fingerprint-based UCIA criminal records check.

n) l The Department may accept the results of the fingerprint-based UCIA criminal records check instead of the items required by subsections (m) k (1) and (2) above. (Section 40(a-5) of the Health Care Worker Background Check Act)

o) m The Department may grant a waiver based on mitigating circumstances, which may include:

- 1) The age of the individual at which the crime was committed;
- 2) The circumstances surrounding the crime;
- 3) The length of time since the conviction;

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- 4) The applicant's or employee's criminal history since the conviction;
- 5) The applicant's or employee's work history;
- 6) The applicant's or employee's current employment references;
- 7) The applicant's or employee's character references;
- 8) Nurse Aide Registry records; and
- 9) Other evidence demonstrating the ability of the applicant or employee to perform the employment responsibilities competently and evidence that the applicant or employee does not pose a threat to the health or safety of residents. (Section 40(b) of the Health Care Worker Background Check Act)

d)† An individual shall not be employed in a direct care position from the time that the employer receives the results of a non-fingerprint check containing disqualifying conditions until the time that the individual receives a waiver from the Department. If the individual challenges the results of the non-fingerprint check, the employer may continue to employ the individual in a direct care position if the individual presents convincing evidence to the employer that the non-fingerprint check is invalid. If the individual challenges the results of the non-fingerprint check, his or her identity shall be validated by a fingerprint-based records check in accordance with subsection (k) of this Section. An individual may not be employed in a direct care position during the pendency of a waiver request. (Section 40(d) of the Health Care Worker Background Check Act)

g)† A facility is not obligated to employ or offer permanent employment to an applicant, or to retain an employee who is granted a waiver. (Section 40(f) of the Health Care Worker Background Check Act)

r)† A facility may retain the individual in a direct care position if the individual presents clear and convincing evidence to the facility that the non-fingerprint-based criminal records report is invalid and if there is a good faith belief on the part of the employer that the individual did not commit an offense listed in subsections (a)(1) to (27) of this Section, pending positive verification through a fingerprint-based criminal records check. Such evidence may include, but not be limited to:

- 1) certified court records;
- 2) written verification from the State's Attorney's office that prosecuted the conviction at issue;
- 3) written verification of employment during the time period during which the crime was committed or during the incarceration period stated in the report;
- 4) a signed affidavit from the individual concerning the validity of the report; or
- 5) documentation from a local law enforcement agency that the individual was not convicted of a disqualifying crime.

s)† This Section shall not apply to:

- 1) An individual who is licensed by the Department of Professional Regulation or the Department of Public Health under another law

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of this State;

- 2) An individual employed or retained by a health care employer for whom a criminal background check is required by another law of this State; or
- 3) A student in a licensed health care field including, but not limited to, a student nurse, a physical therapy student, or a respiratory care student unless he or she is employed by a health care employer in a position with duties involving direct care for residents. (Section 20 of the Health Care Worker Background Check Act)

t)† An employer need not initiate an additional criminal background check for an employee if the employer initiated a criminal background check for the employee after January 1, 1996 and prior to January 1, 1998. This subsection applies only to persons employed prior to January 1, 1998. Any person newly employed on or after January 1, 1998 must receive a background check as required by Section 30 of the Health Care Worker Background Check Act. (Section 25.1 of the Health Care Worker Background Check Act)

u)† The facility must send a copy of the results of the UCIA criminal history record check to the State Nurse Aide Registry for those individuals who are on the Registry. (Section 30(b) of the Health Care Worker Background Check Act) The facility shall include the individual's Social Security number on the criminal history record check results.

v)† The facility shall retain on file for a period of 5 years records of criminal records requests for all employees. The facility shall retain the results of the criminal history records check and waiver, if appropriate, for the duration of the individual's employment. The files shall be subject to inspection by the Department. A fine of \$500 shall be imposed for failure to maintain these records. (Section 50 of the Health Care Worker Background Check Act)

w)† The facility shall maintain a copy of the employee's criminal history record check results and waiver, if applicable, in the personnel file or other secure location accessible to the Department.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### Section 350.682 Resident Attendants

a) As used in this Section, "resident attendant" means an individual who assists residents in a facility with the following activities:

- 1) eating and drinking; and
- 2) personal hygiene limited to washing a resident's hands and face, brushing and combing a resident's hair, oral hygiene, shaving residents with an electric razor, and applying makeup. (Section 3-206.03(a) of the Act)

b) The term "resident attendant" does not include an individual who:



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- 1) is a licensed health professional or a registered dietitian;
- 2) volunteers without monetary compensation;
- 3) is a habilitation aide; or
- 4) performs any nursing or nursing-related services for residents of a facility. (Section 3-206.03(a) of the Act)
- c) A facility may employ resident attendants to assist the habilitation aides with the activities authorized under subsection (a) of this Section. The resident attendants shall not count in the minimum staffing requirements under this Part. (Section 3-206.03(b) of the Act)
- d) Each person employed by the facility as a resident attendant shall meet the following requirements:
  - 1) Be at least 16 years of age; and
  - 2) Be able to speak and understand the English language or a language understood by a substantial percentage of the facility's residents.
- e) Resident attendants shall be supervised by and shall report to a nurse.
- f) The facility shall develop and implement policies and procedures concerning the duties of resident attendants in accordance with this Section, and shall document such duties in a written job description. As part of the comprehensive assessment, each resident shall be evaluated to determine whether the resident may or may not be fed, hydrated or provided personal hygiene by a resident attendant. Such evaluation shall include, but not be limited to, the resident's level of care; the resident's functional status in regard to feeding, hydration, and personal hygiene; the resident's ability to cooperate and communicate with staff.
- h) A facility may not use on a full-time or other paid basis any individual as a resident attendant in the facility unless the individual:
  - 1) has completed a Department-approved training and competency evaluation program encompassing the tasks the individual provides; and
  - 2) is competent to provide feeding, hydration, and personal hygiene services. (Section 3-206.03(c) of the Act) The individual shall be deemed to be competent if he/she is able to perform a hands-on return demonstration of the required skills, as determined by a nurse.
- i) The facility shall maintain documentation of completion of the training program and determination of competency for each person employed as a resident attendant.
- j) A facility-based training and competency evaluation program shall be conducted by a nurse and/or dietitian and shall include one or more of the following units:
  - 1) A feeding unit that is at least five hours in length that is specific to the needs of the residents, and that includes the anatomy of digestion and swallowing; feeding techniques;

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- developing an awareness of eating limitations; potential feeding problems and complications; resident identification; necessary equipment and materials; resident privacy; handwashing; use of disposable gloves; verbal and nonverbal communication skills; behavioral issues and management techniques; signs of choking; signs and symptoms of aspiration; and Heimlich maneuver;
- 2) A hydration unit that is at least three hours in length and that includes the anatomy of digestion and swallowing; hydration technique; resident identification; necessary equipment and materials; potential hydration problems and complications; verbal and nonverbal communication skills; behavioral issues and management techniques; use of disposable gloves; signs of choking; signs and symptoms of aspiration; handwashing; and resident privacy.
- 3) A personal hygiene unit that is at least five hours in length and includes oral hygiene technique, denture care; potential oral hygiene problems and complications; resident identification; verbal and nonverbal communication skills; behavioral issues and management techniques; resident privacy; handwashing; use of disposable gloves; hair combing and brushing; face and handwashing technique; necessary equipment and materials; shaving technique. (Section 3-206.03(d) of the Act)
- k) All training shall also include a unit in safety and resident rights that is at least five hours in length and that includes resident rights; fire safety, use of a fire extinguisher, evacuation procedures; emergency and disaster preparedness; infection control; and use of the call system.
- l) Each resident attendant shall be given instruction by a nurse or dietitian concerning the specific feeding, hydration, and/or personal hygiene care needs of the residents whom he or she will be assigned to assist.
- m) Training programs shall be reviewed and approved by the Department every two years. (Section 3-206.03(d) of the Act)
- n) Training programs shall not be implemented prior to initial Department approval.
- o) Application for initial approval of facility-based and non-facility-based training programs shall be in writing and shall include:
  - 1) An outline containing the methodology, content, and objectives for the training program. The outline shall address the curriculum requirements set forth in subsection (j) of this Section for each unit included in the program;
  - 2) A schedule for the training program;
  - 3) Resumes describing the education, experience, and qualifications of each program instructor, including a copy of any valid Illinois licenses, as applicable; and
  - 4) A copy or description of the tools that will be used to evaluate competency.



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- p) The Department will evaluate the initial application and proposed program for conformance to the program requirements contained in this Section. Based on this review, the Department will:
- 1) Grant approval of the proposed program for a period of two years;
  - 2) Grant approval of the proposed program contingent on the receipt of additional materials, or revisions, needed to remedy any minor deficiencies in the application or proposed program, which would not prevent the program from being implemented, such as deficiencies in the number of hours assigned to cover different areas of content, which can be corrected by submitting a revised schedule or outline; or
  - 3) Deny approval of the proposed program based on major deficiencies in the application or proposed program that would prevent the program from being implemented, such as deficiencies in the qualifications of instructors or missing areas of content.
- q) Programs shall be resubmitted to the Department for review within 60 days prior to expiration of program approval.
- r) If the Department finds that an approved program does not comply with the requirements of this Section, the Department will notify the facility in writing of non-compliance of the program and the reasons for the finding.
- s) If the Department finds that any conditions stated in the written notice of non-compliance issued under subsection (r) of this Section have not been corrected within 30 days after the date of issuance of such notice, the Department will revoke its approval of the program.
- t) Any change in program content or objectives shall be submitted to the Department at least 30 days prior to program delivery. The Department will review the proposed change based on the requirements of this Section and will either approve or disapprove the change. The Department will notify the facility in writing of the approval or disapproval.
- u) A person seeking employment as a resident attendant is subject to the Health Care Worker Background Check Act (Section 3-206.03(f) of the Act) and Section 350.681 of this Part.

(Source: Added at 24 Ill. Reg. 17, effective \_\_\_\_\_)

## SUBPART D: PERSONNEL

## Section 350.820 Consultation Services

- a) The facility shall have all arrangements for each consultant's services in a written agreement setting forth the services to be provided. These agreements shall be updated annually.
- b) The facility shall designate a staff member to provide social services to residents. If the staff member designated to provide social services is not a qualified social worker, the facility shall have an

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- effective arrangement with a qualified social worker to provide social services consultation.
- 2) A qualified social worker is one who meets the definition in Section 350.330:
- e) The facility shall designate a staff member to be the director of the activities program. If this person is not a Registered Occupational Therapist, a Therapeutic Recreation Specialist, or a Qualified Social Worker, the facility shall have a written agreement made with a person from one of those disciplines to provide consultation to the Activity Director and shall assure the programming meets the needs of the residents.
- c) If the supervisor of health services is not a nurse currently registered to practice as a registered professional nurse in Illinois, arrangements shall be made for consultation from a person so qualified. The consultant shall assist with the development of policies, methods, and procedures relating to the medical program and in-service training for all aspects of personal and nursing care. The consultant shall give this consultation in the facility not less than four hours each week.
- e) The facility shall make arrangements for a consultant pharmacist as set forth in Section 350.410(a) and (c).

(Source: Amended at 24 Ill. Reg. 17, effective \_\_\_\_\_)

## SUBPART E: RESIDENT LIVING SERVICES

## Section 350.1050 Recreational and Activities Services

- a) The facility shall provide an ongoing program of activities to meet the interests and preferences and the physical, mental and psychosocial well-being of each resident, in accordance with the resident's comprehensive assessment. The recreational recreational and activity services shall be coordinated with other services and programs provided to the residents in order to make fullest possible use of both community and facility the facility's resources and to maximize benefit benefits to the residents.
  - b) Activity Director and Consultation There shall be a specific planned program of group and individual activities designed to encourage recreation to self-care and maintenance of normal activity which is geared to the individual resident's needs. Activities shall be available daily and for a reasonable amount of time. Residents shall be given an opportunity to contribute to planning preparation conducting cleanup and critique of the program.
- 1) A trained staff person shall be designated where shall be a trained staff person as activity director, and shall be responsible for planning and directing the activities program. This person shall be regularly scheduled to be in the facility at

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least four days per week. ~~on-duty-for-a-sufficient-amount-of time-to-provide-a-program-that-meets-the-needs-and interests.~~ In a facility of 16 or fewer residents, the Qualified Mental Retardation Professional (QMRP) may serve as the activity director. Additional activity personnel shall be provided as necessary to meet the needs of the residents and the program. ~~(B)~~

2) If the activity director is not a Certified Therapeutic Recreation Specialist (CTRS), Occupational Therapist Registered and Licensed (OTR/L), or a Licensed Social Worker (LSW) or Licensed Clinical Social Worker (LCSW) who has specialized course work in social group work, the facility shall have a written agreement with a person from one of those disciplines to provide consultation to the activity director and/or activity department at least monthly, to ensure that the activity programming meets the needs of the residents of the facility.

3) Any person designated as activity director hired after November 1, 2000 shall have a high school diploma or equivalent.

4) Except for individuals qualified as a CTRS, OTR/L, LSW or LCSW as listed in subsection (b)(2) of this Section, any person hired as an activity director after November 1, 2000 shall have taken a 36-hour basic orientation course or shall register to take a 36-hour basic orientation course within 90 days after employment. This course shall be recognized by an accredited college or university or a nationally recognized continuing education sponsor following the guidelines of the International Association for Continuing Education and Training and include at least the following: resident rights; activity care planning for quality of life, human wellness and self-esteem; etiology and symptomatology of persons who are aged, developmentally disabled or mentally ill; therapeutic approaches; philosophy and design of activity programs; activity program resources; program evaluation; practitioner behavior and ethics; resident assessments and supportive documentation; standards and regulations concerning activity programs; management and administration. Individuals who have previously taken a 36-hour basic orientation course, a 42-hour basic activity course or a 90-hour basic education course shall be considered to have met this requirement.

5) The activity director shall have a minimum of ten hours of continuing education per year pertaining to activities programming.

6) Consultation shall be required only quarterly when the activity director meets or exceeds the following criteria:

A) High school diploma or equivalent, five years of full-time or 10,000 hours of part-time experience in activities (three years of that experience as an activity director), and

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completion of a basic orientation course of at least 36 hours; or

B) A two-year associate's degree, three years of experience as an activity director, and completion of a basic orientation course of at least 36 hours; or

C) A four-year degree, one year of full-time experience as an activity director, and completion of a basic orientation course of at least 36 hours.

c) Activity personnel shall have a minimum of 6 hours of in-service training per calendar or employment year, directly related to recreation/activities. Rehabilitation aides who provide activities to residents shall also meet this requirement. In-service training may be provided by qualified facility staff and/or consultants, or may be obtained from college or university courses, seminars and/or workshops, educational offerings through professional organizations, similar educational offerings or any combination thereof.

d) Written ~~where-shall-be-written~~ permission, with any contraindications stated, shall be given by the resident's physician ~~if for the resident participates to-participate~~ in the activity program. Standing orders will be acceptable with individual contraindications noted. ~~(B)~~

e) An assessment of each resident shall be conducted, which shall include the following:

1) Background information, including education level, cultural/social issues, and spiritual needs;

2) Current functional status, including communication status, physical functioning, cognitive abilities, and behavioral issues; and

3) Leisure functioning, including attitude toward leisure, awareness of leisure resources, knowledge of activity skills, and social interaction skills and activity interests, both current and past.

f) The activity staff shall participate in the development of an individualized habilitation plan addressing needs and interests of the residents including activity/recreational goals and/or interventions.

g) The facility shall provide a specific, planned program of individual (including self-initiated) and group activities that are aimed at improving, maintaining, or minimizing decline in the resident's functional status, and at promoting well-being. The program shall be designated in accordance with the individual resident's needs, based on past and present lifestyle, cultural/ethnic background interest, capabilities, and tolerance. Activities shall be daily and shall reflect the schedules, choices, and rights of the residents (e.g., morning, afternoon, evenings and weekends). The residents shall be given opportunities to contribute to planning, preparing, conducting, concluding and evaluating the activity program.

h) The activity program shall be multifaceted and shall reflect each individual resident's needs and be adapted to the resident's capabilities. The activity program philosophy shall encompass programs that provide stimulation or solace; promote physical,



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cognitive and/or emotional health; enhance, to the extent practicable, each resident's physical and mental status; and promote each resident's self-respect by providing, for example, activities that support self-expression and choice. Specific types of activities may include:

- 1) Physical activity (e.g., exercise, fitness, adapted sports);
- 2) Cognitive stimulation/intellectual/educational activity (e.g., discussion groups, guest speakers, films, trivia, quizzes, table games, puzzles, writing, spelling, newsletter);
- 3) Spiritual/religious activity (e.g., religious services, spiritual study groups, visits from spiritual support groups);
- 4) Service activity (e.g., volunteer work for the facility, other individuals and/or the community);
- 5) Sensory stimulation (e.g., tactile, olfactory, auditory, visual and gustatory);
- 6) Community involvement (e.g., community groups coming into the facility for intergenerational programs, special entertainment and volunteer visits; excursions outside the facility to museums, sporting events, entertainment, parks);
- 7) Expressive and creative arts/crafts (adapted to the resident's capabilities), music, movement/dance, horticulture, pet-facilitated therapy, drama, literary programs, art, cooking;
- 8) Family involvement (e.g., correspondence, family parties, holiday celebrations, family volunteers); and
- 9) Social activity (e.g., parties and seasonal activities).

i) If residents participate in regularly scheduled therapeutic programs outside the facility (e.g., school, employment, or sheltered workshop), the residents' needs for activities while they are in the facility shall be met.

ii) Residents' participation in and response to the activity program shall be documented at least quarterly and included in the clinical record. The facility shall maintain current records of resident participation in the activity program.

e) The recreation activity program shall include, but is not limited to, the following program areas:

- 1) Recreational activities (examples:--games; both quiet and active parties; and outside entertainment);
- 2) Arts and crafts (applicable for both men and women);
- 3) Religious activities (examples:--Bible study or discussion; Bible quizzes and games; hymn-singing; and grace-at-meals);--these are in addition to routine religious services;
- 4) Service activities for community and facility (examples:--assist with--community--fund--drives;--projects--for--orphanages;--care--of one's own area in the facility; and helping to fold linen); intellectual and educational activities (examples:--classes--in writing--arithmetic;--grooming--and--social--graces;--planned-group discussion;--quizzes--and--word--games;--resident--council;--and newsletter);

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6) Community activities (examples:--residents' participation in community activities such as plays, church events, band concerts, and tours);

f) A planned volunteer or auxiliary program that assists with the activities program shall be encouraged;--it shall be under the direction of a staff member in a supervisory capacity;

g) Equipment and supplies in sufficient quantity and variety shall be provided to carry out the stated objectives of the activities programs;

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 350.1055 Volunteer Program

a) If the facility has a volunteer or auxiliary program, a facility staff person shall direct the program. Community groups such as Boy and Girl Scouts, church groups and civic organizations that may occasionally present programs, activities, or entertainment in the facility shall not be considered volunteers for the purposes of this Section.

b) Volunteers shall complete a standard orientation program, in accordance with their facility responsibilities and with the facility's policies and procedures governing the volunteer program. The orientation shall include, but not be limited to:

- 1) Residents' rights;
- 2) Confidentiality;
- 3) Disaster preparedness (i.e., fire, tornado);
- 4) Emergency response procedures;
- 5) Safety procedures/precautions;
- 6) Infection control; and
- 7) Body mechanics.

c) Volunteers shall respect all aspects of confidentiality.

d) Volunteers shall be informed of and shall implement medical and physical precautions related to the residents with whom they work.

e) Volunteers shall not take the place of qualified staff (e.g., activity professionals, nursing assistants, or case workers).

(Source: Added at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)



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1) Heading of the Part: Long-Term Care for Under Age 22 Facilities Code

2) Code Citation: 77 Ill. Adm. Code 390

3) Section Numbers: Adopted Action:

390.160 Amendment

390.290 Repealer

390.681 Amendment

390.682 New Section

4) Statutory Authority: Nursing Home Care Act [210 ILCS 45]

5) Effective date of Amendments: November 1, 2000

6) Does this rulemaking contain an automatic repeal date? No

7) Does this rulemaking contain any incorporations by reference? No

8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal was Published in Illinois Register:

March 24, 2000 - 24 Ill. Reg. 4843

10) Has JCAR issued a Statement of Objection to these amendments? No

11) Difference between proposal and final version: The following changes were made in response to comments received during the first notice or public comment period:

1. "SUBPART A: GENERAL PROVISIONS" was added after the Source Note.

2. In Section 390.681(e), a comma was added after "determination".

3. In Section 390.682(j), "or" was changed to "of".

The following changes were made in response to comments and suggestions of the JCAR:

1. In Section 390.681(c), an opening parenthesis was added before "Section".

2. In Section 390.681(p), "10" was stricken and "40" was added.

3. In Section 390.682(h)(2), "a" was added before "perform".

## DEPARTMENT OF PUBLIC HEALTH

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4. In Section 390.682(j)(1), (2), and (3), "necessary" was added before "equipment".

In addition, various typographical, grammatical and form changes were made in response to the comments from JCAR.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? All changes have been made as agreed upon.

13) Will these amendments replace emergency amendments currently in effect? No

14) Are there any other amendments pending on this Part? Yes

Section Numbers Proposed Action Ill. Reg. Citation

390.1020 Amendments 24 Ill. Reg. 13289

15) Summary and purpose of the Amendments: Section 390.160 (Issuance of a Renewal License) is amended to conform language concerning license renewal to the language of Section 3-115 of the Act, as amended by Public Act 91-215, effective July 20, 1999. Section 390.290 (Quarterly List of Violators) is being repealed because it is primarily statutory language that directs the Department. Repeal of this Section will not affect the Department's statutory obligation to prepare a quarterly list of violators.

Section 390.681 (Health Care Worker Background Check) is amended to implement P.A. 91-598 (effective January 1, 2000). A facility will be prohibited from hiring, employing or retaining a person with direct care duties if the facility becomes aware that the individual has been convicted in another state of committing or attempting to commit an offense that has the same or similar elements as a disqualifying crime under the Health Care Worker Background Check Act, as verified by court records, records from a State agency, or an FBI criminal history record check. The facility is not, however, obligated to conduct background checks in other states in which an employee has resided. The definition of "direct care" is amended, and guidelines are included to assist facilities in determining which employees provide direct care. The rules are also amended to clarify the status of employees during the waiver process.

Section 390.682 (Resident Attendants) is added to implement Public Act 91-461, effective August 6, 1999. This legislation allows facilities to employ resident attendants to assist residents with eating, drinking, and personal hygiene. The amendments include requirements for resident attendant training and competency and for assessment of residents to determine which residents can be assisted by resident attendants.

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16) Information and questions regarding these adopted amendments shall be directed to:

Paul Thompson  
Division of Legal Services  
Department of Public Health  
535 West Jefferson, Fifth Floor  
Springfield, Illinois 62761  
217/782-2043  
e-mail: rules@idph.state.il.us

The full text of the adopted amendments begins on the next page:

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF ADOPTED AMENDMENTS

TITLE 77: PUBLIC HEALTH  
CHAPTER 1: DEPARTMENT OF PUBLIC HEALTH  
SUBCHAPTER c: LONG-TERM CARE FACILITIES

## PART 390

## LONG-TERM CARE FOR UNDER AGE 22 FACILITIES CODE

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390.120	Application for License
390.130	Licensee
390.140	Issuance of an Initial License for a New Facility
390.150	Issuance of an Initial License Due to a Change of Ownership
390.160	Issuance of a Renewal License
390.165	Criteria for Adverse Licensure Actions
390.170	Denial of Initial License
390.175	Denial of Renewal of License
390.180	Revocation of License
390.190	Experimental Program Conflicting With Requirements
390.200	Inspections, Surveys, Evaluations and Consultation
390.210	Filing an Annual Attested Financial Statement
390.220	Information to be Made Available to the Public by the Department
390.230	Information to be Made Available to the Public By the Licensee
390.240	Municipal Licensing
390.250	Ownership Disclosure
390.260	Issuance of Conditional Licenses
390.270	Monitor and Receivership
390.271	Presentation of Findings
390.272	Determination to Issue a Notice of Violation or Administrative Warning
390.274	Determination of the Level of a Violation
390.276	Notice of Violation
390.277	Administrative Warning
390.278	Plans of Correction
390.280	Reports of Correction
390.282	Conditions for Assessment of Penalties
390.284	Calculation of Penalties
390.286	Determination to Assess Penalties
390.288	Reduction or Waiver of Penalties
390.290	Quarterly List of Violators (Repealed)
390.300	Alcoholism Treatment Programs in Long-Term Care Facilities
390.310	Department May Survey Facilities Formerly Licensed
390.315	Supported Congregate Living Arrangement Demonstration
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390.650	Residents' Advisory Council
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390.670	Personnel Policies
390.675	Initial Health Evaluation for Employees
390.680	Child Care/Habilitation Aides
390.681	Health Care Worker Background Check
390.682	Resident Attendants
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390.685	Student Interns
390.690	Disaster Preparedness
390.700	Serious Incidents and Accidents

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390.1035	Tuberculin Skin Test Procedures
390.1040	Nursing Services
390.1050	Dental Care Services
390.1060	Physical and Occupational Therapy Services
390.1070	Psychological Services
390.1080	Social Services
390.1090	Speech Pathology and Audiology Services
390.1100	Recreational and Activity Services
390.1110	Educational Services
390.1120	Work Activity and Prevocational Training Services

Section 390.1010	Service Programs
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## SUBPART L: WATER SUPPLY AND SEWAGE DISPOSAL

## Section

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## SUBPART N: DESIGN AND CONSTRUCTION STANDARDS FOR EXISTING FACILITIES

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## Section

390.3510 Day Care in Long-Term Care Facilities

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SOURCE: Adopted at 6 Ill. Reg. 1658, effective February 1, 1982; emergency amendment at 6 Ill. Reg. 3223, effective March 8, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 11622, effective September 14, 1982; amended at 6 Ill. Reg. 14557 and 14560, effective November 8, 1982; amended at 6 Ill. Reg. 14678, effective November 15, 1982; amended at 7 Ill. Reg. 282, effective December 22, 1982; amended at 7 Ill. Reg. 1927, effective January 28, 1983; amended at 7 Ill. Reg. 8574, effective July 11, 1983; amended at 7 Ill. Reg. 15821, effective November 15, 1983; amended at 7 Ill. Reg. 16988, effective December 14, 1983; amended at 8 Ill. Reg. 15585, 15589, and 15592, effective August 15, 1984; amended at 8 Ill. Reg. 16989, effective September 5, 1984; codified at 8 Ill. Reg. 19823; amended at 8 Ill. Reg. 24159, effective November 29, 1984; amended at 8 Ill. Reg. 24656, effective December 7, 1984; amended at 8 Ill. Reg. 25083, effective December 14, 1984; amended at 9 Ill. Reg. 122, effective December 26, 1984; amended at 9 Ill. Reg. 10785, effective July 1, 1985; amended at 11 Ill. Reg. 16782, effective October 1, 1987; amended at 12 Ill. Reg. 931, effective December 24, 1987; amended at 12 Ill. Reg. 16780, effective October 1, 1988; emergency amendment at 12 Ill. Reg. 18243, effective October 24, 1988, for a maximum of 150 days; emergency expired March 23, 1989; amended at 13 Ill. Reg. 6301, effective April 17, 1989; amended at 13 Ill. Reg. 19521, effective December 1, 1989; amended at 14 Ill. Reg. 14904, effective October 1, 1990; amended at 15 Ill. Reg. 1878, effective January 25, 1991; amended at 16 Ill. Reg. 623, effective January 1, 1992; amended at 16 Ill. Reg. 14329, effective September 3, 1992; emergency amendment at 17 Ill. Reg. 2390, effective February 3, 1993, for a maximum of 150 days; emergency expired on July 3, 1993; emergency amendment at 17 Ill. Reg. 7974, effective May 6, 1993, for a maximum of 150 days; emergency expired on October 3, 1993; amended at 17 Ill. Reg. 16167, effective January 1, 1994; amended at 17 Ill. Reg. 19235, effective October 26, 1993; amended at 17 Ill. Reg. 19547, effective November 4, 1993; amended at 17 Ill. Reg. 21031, effective November 20, 1993; amended at 18 Ill. Reg. 1453, effective January 14, 1994; amended at 18 Ill. Reg. 15807, effective October 15, 1994; amended at 19 Ill. Reg. 11525, effective July 29, 1995; emergency amendment at 20 Ill. Reg. 535, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 10106, effective July 15, 1996; amended at 20 Ill. Reg. 12101, effective September 10, 1996; amended at 22 Ill. Reg. 4062, effective February 13, 1998; amended at 22 Ill. Reg. 7188, effective April 15, 1998; amended at 22 Ill. Reg. 16576, effective September 18, 1998; amended at 23 Ill. Reg. 1069, effective January 15, 1999; amended at 23 Ill. Reg. 8021, effective July 15, 1999; amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: GENERAL PROVISIONS

## Section 390.160 Issuance of a Renewal License

At least 120 days, but not more than 150 days, prior to license expiration, the licensee shall submit an application for renewal of the license in such form and containing such information as the Department requires. If the

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application is approved, and the facility is in compliance with all other licensure requirements and the facility is in compliance with all other licensure requirements, the license shall be renewed in accordance with Section 3-110 of the Act. (Section 3-115 of the Act)

(Source: Amended at 24 Ill. Reg. 17228, effective \_\_\_\_\_)

## Section 390.290 Quarterly List of Violators (Repealed)

- a) The Department shall prepare on a quarterly basis a list containing the names and addresses of all facilities against which the Department during the previous quarter has:
- 1) Issued a notice of penalty assessment for a level A violation as provided in Section 390.286 of this Part and Section 3-395(4) of the Act;
  - 2) Issued a notice of revocation of the facility's license as provided in Section 390.180 of this Part and Section 3-119 of the Act;
  - 3) Issued a notice refusing renewal of the facility's license as provided in Section 390.175 of this Part and Section 3-119 of the Act;
  - 4) Issued a notice to suspend the facility's license as provided in Section 3-119 of the Act;
  - 5) Issued a conditional license to the facility based on violations which were not corrected as provided in Section 390.260 of this Part and Section 3-313 of the Act, except where the terms of the conditional license have been stayed pursuant to Section 390.260(d);
  - 6) Placed a monitor in the facility as provided in Section 390.270 of this Part and Section 3-501 of the Act for one of the following reasons:
    - A) The facility is operating without a license;
    - B) The Department has revoked or refused to renew the license of the facility;
    - C) The facility is closing or has informed the Department that it intends to close and adequate arrangements for relocation of residents have not been made at least 30 days prior to closure;
    - D) The Department determines that an emergency exists and has issued a notice of revocation or nonrenewal against the facility's license;
  - 7) Initiated an action to appoint a receiver;
  - 8) Recommended to the Director of the Department of Public Aid, or the Secretary of the United States Department of Health and Human Services, the decertification for violations in relation to patient care of a facility pursuant to Titles XVII and XIX of the Federal Social Security Act. (42 U.S.C. 1395 et seq. and

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1396-et-seq.;--(Section-3-304(a)-of-the-Act)  
b) In-addition-to-the-name-and-address-of-the-facility--the-list--shall include--the-name--and-address--of--the-person-or-licenssee--against-whom the-action-has-been-initiated--a-self-explanatory-summary-of-the-facts which-warranted-the-initiation-of-each-action--the-type-of-action initiated--the-date-of-the-initiation-of-the-action--the-amount-of-the penalty--sought--to--be-assessed--if-any--and-the-final-disposition-of the-action--if-completed-- (Section-3-304(b)-of-the-Act)

(Source: Repealed at 24 Ill. Reg. 17.1.1, effective

## SUBPART C: POLICIES

## Section 390.681 Health Care Worker Background Check

a) The facility shall not knowingly hire any individual in a position with duties involving direct care for residents if that person has been convicted of committing or attempting to commit one or more of the following offenses (Section 25(a) of the Health Care Worker Background Check Act [225 ILCS 46/25]):

- 1) Solicitation of murder, solicitation of murder for hire (Sections 8-1.1 and 8-1.2 of the Criminal Code of 1961 [720 ILCS 5/8-1.1 and 8-1.2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 8-1.1 and 8-1.2));
- 2) Murder, homicide, manslaughter or concealment of a homicidal death (Sections 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3 of the Criminal Code of 1961 [720 ILCS 5/9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2 and 9-3.3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3); Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 3, 236, 358, 360, 361, 362, 363, 364, 364a, 365, 370, 373, 373a, 417, and 474));
- 3) Kidnapping or child abduction (Sections 10-1, 10-2, 10-5 and 10-7 of the Criminal Code of 1961 [720 ILCS 5/10-1, 10-2, 10-5, and 10-7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-1, 10-2, 10-5, and 10-7); Ill. Rev. Stat. 1985, ch. 38, par. 10-6; Ill. Rev. Stat. 1961, ch. 38, pars. 384 to 386));
- 4) Unlawful restraint or forcible detention (Sections 10-3, 10-3.1, and 10-4 of the Criminal Code of 1961 [720 ILCS 5/10-3, 10-3.1, and 10-4] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-3, 10-3.1, and 10-4); Ill. Rev. Stat. 1961, ch. 38, pars. 252, 252.1, and 252.4));
- 5) Indecent solicitation of a child, sexual exploitation of a child, exploitation of a child, child pornography (Sections 11-6, 11-9.1, 11-19.2, and 11-20.1 of the Criminal Code of 1961 [720 ILCS 5/11-6, 11-9.1, 11-19.2, and 11-20.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-6, 11-19.2, and 11-20.1); Ill. Rev.

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- Stat. 1983, ch. 38, par. 11-20a; Ill. Rev. Stat. 1961, ch. 38, pars. 103 and 104));
- 6) Assault, battery, heinous battery, tampering with food, drugs or cosmetics, or infliction of great bodily harm (Sections 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7 of the Criminal Code of 1961 [720 ILCS 5/12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7); Ill. Rev. Stat. 1961, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 55, 56, and 56a to 60b));
- 7) Aggravated stalking (Section 12-7.4 of the Criminal Code of 1961 [720 ILCS 5/12-7.4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-7.4));
- 8) Home invasion (Section 12-11 of the Criminal Code of 1961 [720 ILCS 5/12-11] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-11));
- 9) Sexual assault or sexual abuse (Sections 12-13, 12-14, 12-14.1, 12-15, and 12-16 of the Criminal Code of 1961 [720 ILCS 5/12-13, 12-14, 12-14.1, 12-15, and 12-16] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-1, 11-2, 11-3, 11-4, 11-5, 12-13, 12-14, 12-15, and 12-16); Ill. Rev. Stat. 1985, ch. 38, pars. 11-1, 11-4, and 11-4.1; Ill. Rev. Stat. 1961, ch. 38, pars. 109, 141, 142, 490, and 491));
- 10) Abuse or gross neglect of a long-term care facility resident (Section 12-19 of the Criminal Code of 1961 [720 ILCS 5/12-19] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-19));
- 11) Criminal neglect of an elderly or disabled person (Section 12-21 of the Criminal Code of 1961 [720 ILCS 5/12-21] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-21));
- 12) Endangering the life or health of a child (Section 12-21.6 of the Criminal Code of 1961 [720 ILCS 5/12-21.6] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354; Ill. Rev. Stat. 1961, ch. 38, par. 95));
- 13) Ritual mutilation, ritualized abuse of a child (Sections 12-32 and 12-33 of the Criminal Code of 1961 [720 ILCS 5/12-32 and 12-33] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-32 and 12-33));
- 14) Theft, retail theft (Sections 16-1 and 16A-3 of the Criminal Code of 1961 [720 ILCS 5/16-1 and 16A-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 16-1 and 16A-3); Ill. Rev. Stat. 1961, ch. 38, pars. 62, 207 to 218, 240 to 244, 246, 253, 254.1, 258, 262, 262a, 273, 290, 291, 301a, 354, 387 to 388b, 389, 393 to 400, 404a to 404c, 438, 492 to 496));
- 15) Financial exploitation of an elderly or disabled person (Section 16-1.3 of the Criminal Code of 1961 [720 ILCS 5/16-1.3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 16-1.3));



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- 16) Forgery (Section 17-3 of the Criminal Code of 1961 [720 ILCS 5/17-3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 17-3; Ill. Rev. Stat. 1961, ch. 38, pars. 151 and 277 to 286));
- 17) Robbery, armed robbery (Sections 18-1 and 18-2 of the Criminal Code of 1961 [720 ILCS 5/18-1 and 18-2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 18-1 and 18-2));
- 18) Vehicular hijacking, aggravated vehicular hijacking, aggravated robbery (Sections 18-3, 18-4, and 18-5 of the Criminal Code of 1961 [720 ILCS 5/18-3, 18-4, and 18-5]);
- 19) Burglary, residential burglary (Sections 19-1 and 19-3 of the Criminal Code of 1961 [720 ILCS 5/19-1 and 19-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 19-1 and 19-3; Ill. Rev. Stat. 1961, ch. 38, pars. 84 to 86, 88, and 501));
- 20) Criminal trespass to a residence (Section 19-4 of the Criminal Code of 1961 [720 ILCS 5/19-4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 19-4));
- 21) Arson (Sections 20-1 and 20-1.1 of the Criminal Code of 1961 [720 ILCS 5/20-1 and 20-1.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 20-1 and 20-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 40 to 53 and 236 to 238));
- 22) Unlawful use of weapons, aggravated discharge of a firearm, or reckless discharge of a firearm (Sections 24-1, 24-1.2, and 24-1.5 of the Criminal Code of 1961 [720 ILCS 5/24-1, 24-1.2, and 24-1.5] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 24-1 and 24-1.2; Ill. Rev. Stat. 1961, ch. 38, pars. 152, 155, 155a to 158b, 414a to 414c, 414e and 414g));
- 23) Armed violence - elements of the offense (Section 33A-2 of the Criminal Code of 1961 [720 ILCS 5/33A-2] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 33A-2));
- 24) Those provided in Section 4 of the Wrongs to Children Act (Section 4 of the Wrongs to Children Act [720 ILCS 150/4] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354));
- 25) Cruelty to children (Section 53 of the Criminal Jurisprudence Act [720 ILCS 115/53] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2368));
- 26) Manufacture, delivery or trafficking of cannabis, delivery of cannabis on school grounds, or deliver to person under 18; violation by person under 18 (Sections 5, 5.1, 5.2, 7, and 9 of the Cannabis Control Act [720 ILCS 550/5, 5.1, 5.2, 7, and 9] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 705, 705.1, 705.2, 707 and 709)); or
- 27) Manufacture, delivery or trafficking of controlled substances (Sections 401, 401.1, 404, 405, 407 and 407.1 of the Illinois Controlled Substance Act [720 ILCS 570/401, 401.1 404, 405, 405.1, 407, and 407.1] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 1401, 1401.1, 1404, 1405, 1405.1, 1407, and 1407.1)).
- b) The facility shall not knowingly employ or retain any individual in a

position with duties involving direct care for residents if that person has been convicted of committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) of this Section unless the applicant, employee or employer obtains a waiver pursuant to subsections (m)(1) and (o)(1) of this Section. (Section 25(a) of the Health Care Worker Background Check Act)

- c) A facility shall not hire, employ, or retain any individual in a position with duties involving direct care of clients, patients, or residents if the health care employer becomes aware that the individual has been convicted in another state of committing or attempting to commit an offense that has the same or similar elements as an offense listed in subsections (a)(1) to (27) of this Section, as verified by court records, records from a State agency, or an FBI criminal history record check. This shall not be construed to mean that a health care employer has an obligation to conduct a criminal history records check in other states in which an employee has resided. (Section 25(b) of the Act)

d) For the purpose of this Section:

- 1) "Applicant" means an individual seeking employment with a facility who has received a bona fide conditional offer of employment.
  - 2) "Conditional offer of employment" means a bona fide offer of employment by a facility to an applicant, which is contingent upon the receipt of a report from the Department of State Police indicating that the applicant does not have a record of conviction of any of the criminal offenses listed in subsections (a)(1) to (27) of this Section.
  - 3) "Direct care" means the provision of nursing care or assistance with feeding, meals, dressing, movement, bathing, or other personal needs. ~~or maintenance, or general supervision, and oversight of the physical and mental well-being of an individual who is incapable of managing his or her person whether or not a guardian has been appointed for that individual.~~
  - 4) "Initiate" means the obtaining of the authorization for a record check from a student, applicant, or employee. (Section 15 of the Health Care Worker Background Check Act)
- e) For purposes of the Health Care Worker Background Check Act, the facility shall establish a policy defining which employees provide direct care. In making this determination, the facility shall consider the following:
- 1) The employee's assigned job responsibilities as set forth in the employee's job description;
  - 2) Whether the employee is required to or has the opportunity to be alone with residents, with the exception of infrequent or unusual occasions; and
  - 3) Whether the employee's responsibilities include physical contact with residents, for example to provide therapy or to draw blood.

f) Beginning January 1, 1996, when the facility makes a conditional

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offer of employment to an applicant who is not exempt under subsection (s)(1) of this Section, for a position with duties that involve direct care for residents, the employer shall inquire of the Nurse Aide Registry as to the status of the applicant's Uniform Conviction Information Act (UCIA) criminal history record check. If a UCIA criminal history record check has not been conducted within the last 12 months, the facility must initiate or have initiated on its behalf a UCIA criminal history record check for that applicant. (Section 30(c) of the Health Care Worker Background Check Act)

g) The facility shall transmit all necessary information and fees to the Illinois State Police within 10 working days after receipt of the authorization. (Section 15 of the Health Care Worker Background Check Act)

h) The facility may accept an authentic UCIA criminal history record check that has been conducted within the last 12 months rather than initiating a check as required in subsection (f)(1) of this Section.

i) The request for a UCIA criminal history record check shall be made as prescribed by the Department of State Police. The applicant or employee must be notified of the following whenever a non-fingerprint-based UCIA criminal history record check is made:

- 1) That the facility shall request or have requested on its behalf a non-fingerprint-based UCIA criminal history record check pursuant to the Health Care Worker Background Check Act.
- 2) That the applicant or employee has a right to obtain a copy of the criminal records report from the facility, challenge the accuracy and completeness of the report, and request a waiver in accordance with subsection (m)(1) of this Section.
- 3) That the applicant, if hired conditionally, may be terminated if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the applicant's identity is validated and it is determined that the applicant or employee does not have a disqualifying criminal history record based on a fingerprint-based records check pursuant to subsection (k)(1) of this Section.
- 4) That the applicant, if not hired conditionally, shall not be hired if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the applicant's record is cleared based on a fingerprint-based records check pursuant to subsection (k)(1) of this Section.
- 5) That the employee may be terminated if the criminal records report indicates that the employee has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the employee's record is cleared based on a fingerprint-based records check pursuant to subsection (k)(1) of this Section. (Section 30(e) and (f) of the Health Care Worker Background Check Act)

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Worker Background Check Act)

j) A facility may conditionally employ an applicant to provide direct care for up to three months pending the results of a UCIA criminal history record check. (Section 30(g) of the Health Care Worker Background Check Act)

k) An applicant or employee whose non-fingerprint-based UCIA criminal history record check indicates a conviction for committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) of this Section may request that the facility or its designee commence a fingerprint-based UCIA criminal records check by submitting any necessary fees and information in a form and manner prescribed by the Department of State Police. (Section 35 of the Health Care Worker Background Check Act)

l) A facility having actual knowledge from a source other than a non-fingerprint check that an employee has been convicted of committing or attempting to commit one of the offenses enumerated in Section 25 of the Act must initiate a fingerprint-based background check within 10 working days after acquiring that knowledge. The facility may continue to employ that individual in a direct care position, may reassign that individual to a non-direct care position, or may suspend the individual until the results of the fingerprint-based background check are received. (Section 30(d) of the Health Care Worker Background Check Act)

m) An applicant, employee or employer may request a waiver to subsection (a), (b) or (c) of this Section by submitting the following to the Department within five working days after the receipt of the criminal records report:

- 1) A completed fingerprint-based UCIA Criminal Records Check form (Section 40(a) of the Health Care Worker Background Check Act) (which the Department will forward to the Illinois State Police); and
  - 2) A certified check, money order or agency check made payable to the Department of State Police for the amount of money necessary to initiate a fingerprint-based UCIA Criminal Records Check.
- n) The Department may accept the results of the fingerprint-based criminal records check instead of the items required by subsections (k)(1) and (2) above.
- o) The Department may grant a waiver based on mitigating circumstances, which may include:
- 1) The age of the individual at which the crime was committed;
  - 2) The circumstances surrounding the crime;
  - 3) The length of time since the conviction;
  - 4) The applicant's or employee's criminal history since the conviction;
  - 5) The applicant's or employee's work history;
  - 6) The applicant's or employee's current employment references;
  - 7) The applicant's or employee's character references;
  - 8) Nurse Aide Registry records; and



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- 9) Other evidence demonstrating the ability of the applicant or employee to perform the employment responsibilities competently and evidence that the applicant or employee does not pose a threat to the health or safety of residents. (Section 40(b) of the Health Care Worker Background Check Act)

p)† An individual shall not be employed in a direct care position from the time that the employer receives the results of a non-fingerprint check containing disqualifying conditions until the time that the individual receives a waiver from the Department. If the individual challenges the results of the non-fingerprint check, the employer may continue to employ the individual in a direct care position if the individual presents convincing evidence to the employer that the non-fingerprint check is invalid. If the individual challenges the results of the non-fingerprint check, his or her identity shall be validated by a fingerprint-based records check in accordance with subsection (k) of this Section. ~~An individual may not be employed in a direct care position during the pendency of a waiver request.~~ (Section 40†9(d) of the Health Care Worker Background Check Act)

q)† A facility is not obligated to employ or offer permanent employment to an applicant, or to retain an employee who is granted a waiver. (Section 40(f) of the Health Care Worker Background Check Act)

r)† A facility may retain the individual in a direct care position if the individual presents clear and convincing evidence to the facility that the non-fingerprint-based criminal records report is invalid and if there is a good faith belief on the part of the employer that the individual did not commit an offense listed in subsections (a)(1) to (27) of this Section, pending positive verification through a fingerprint-based criminal records check. Such evidence may include, but not be limited to:

- 1) certified court records;
- 2) written verification from the State's Attorney's office that prosecuted the conviction at issue;
- 3) written verification of employment during the time period during which the crime was committed or during the incarceration period stated in the report;
- 4) a signed affidavit from the individual concerning the validity of the report; or
- 5) documentation from a local law enforcement agency that the individual was not convicted of a disqualifying crime.

s)† This Section shall not apply to:

- 1) An individual who is licensed by the Department of Professional Regulation or the Department of Public Health under another law of this State;
- 2) An individual employed or retained by a health care employer for whom a criminal background check is required by another law of this State; or
- 3) A student in a licensed health care field including, but not limited to, a student nurse, a physical therapy student, or a

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respiratory care student unless he or she is employed by a health care employer in a position with duties involving direct care for residents. (Section 20 of the Health Care Worker Background Check Act)

t)† An employer need not initiate an additional criminal background check for an employee if the employer initiated a criminal background check for the employee after January 1, 1996 and prior to January 1, 1998. This subsection applies only to persons employed prior to January 1, 1998. Any person newly employed on or after January 1, 1998 must receive a background check as required by Section 30 of the Health Care Worker Background Check Act. (Section 25.1 of the Health Care Worker Background Check Act)

u)† The facility must send a copy of the results of the UCIA criminal history record check to the State Nurse Aide Registry for those individuals who are on the Registry. (Section 30(b) of the Health Care Worker Background Check Act) The facility shall include the individual's Social Security number on the criminal history record check results.

v)† The facility shall retain on file for a period of 5 years records of criminal records requests for all employees. The facility shall retain the results of the UCIA criminal history records check and waiver, if appropriate, for the duration of the individual's employment. The files shall be subject to inspection by the Department. A fine of \$500 shall be imposed for failure to maintain these records. (Section 50 of the Health Care Worker Background Check Act)

w)† The facility shall maintain a copy of the employee's criminal history record check results and waiver, if applicable, in the personnel file or other secure location accessible to the Department.

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 390.682 Resident Attendants**

a) As used in this Section, "resident attendant" means an individual who assists residents in a facility with the following activities:

- 1) eating and drinking; and
- 2) personal hygiene limited to washing a resident's hands and face, brushing and combing a resident's hair, oral hygiene, shaving residents with an electric razor, and applying makeup. (Section 3-206.03(a) of the Act)

b) The term "resident attendant" does not include an individual who:

- 1) is a licensed health professional or a registered dietitian;
- 2) volunteers without monetary compensation;
- 3) is a child care/habilitation aide; or
- 4) performs any nursing or nursing-related services for residents of a facility. (Section 3-206.03(a) of the Act)

c) A facility may employ resident attendants to assist the child



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care/habilitation aides with the activities authorized under subsection (a) of this Section. The resident attendants shall not count in the minimum staffing requirements under this Part. (Section 3-206.03(b) of the Act)

d) Each person employed by the facility as a resident attendant shall meet of the following requirements:

- 1) Be at least 16 years of age; and
- 2) language understood by a substantial percentage of the facility's residents.

e) Resident attendants shall be supervised by and shall report to a nurse.

f) The facility shall develop and implement policies and procedures concerning the duties of resident attendants in accordance with this Section, and shall document such duties in a written job description.

g) As part of the comprehensive assessment, each resident shall be evaluated to determine whether the resident may or may not be fed, hydrated or provided personal hygiene by a resident attendant. Such evaluation shall include, but not be limited to, the resident's level of care; the resident's functional status in regard to feeding, hydration, and personal hygiene; the resident's ability to cooperate and communicate with staff.

h) A facility may not use on a full-time or other paid basis any individual as a resident attendant in the facility unless the individual:

- 1) has completed a department-approved training and competency evaluation program encompassing the tasks the individual provides; and

2) is competent to provide feeding, hydration, and personal hygiene services. (Section 3-206.03(c) of the Act) The individual shall be deemed to be competent if he/she is able to perform a hands-on return demonstration of the required skills, as determined by a nurse.

i) The facility shall maintain documentation of completion of the training program and determination of competency for each person employed as a resident attendant.

j) A facility-based training and competency evaluation program shall be conducted by a nurse and/or dietitian and shall include one or more of the following units:

- 1) A feeding unit that is at least five hours in length that is specific to the needs of the residents, and that includes the anatomy of digestion and swallowing; feeding techniques; developing an awareness of eating limitations; potential feeding problems and complications; resident identification; necessary equipment and materials; resident privacy; handwashing; use of disposable gloves; verbal and nonverbal communication skills; behavioral issues and management techniques; signs of choking; signs and symptoms of aspiration; and Heimlich maneuver;

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2) A hydration unit that is at least three hours in length and that includes the anatomy of digestion and swallowing; hydration technique; resident identification; necessary equipment and materials; potential hydration problems and complications; verbal and nonverbal communication skills; behavioral issues and management techniques; use of disposable gloves; signs of choking; signs and symptoms of aspiration; handwashing; and resident privacy.

3) A personal hygiene unit that is at least five hours in length and includes oral hygiene technique, denture care; potential oral hygiene problems and complications; resident identification; verbal and nonverbal communication skills; behavioral issues and management techniques; resident privacy; handwashing; use of disposable gloves; hair combing and brushing; face and hand washing technique; necessary equipment and materials; shaving technique. (Section 3-206.03(d) of the Act)

k) All training shall also include a unit in safety and resident rights that is at least five hours in length and that includes resident rights; fire safety; use of a fire extinguisher; evacuation procedures; emergency and disaster preparedness; infection control; and use of the call system.

l) Each resident attendant shall be given instruction by a nurse or dietitian concerning the specific feeding, hydration, and/or personal hygiene care needs of the residents whom he or she will be assigned to assist.

m) Training programs shall be reviewed and approved by the Department every two years. (Section 3-206.03(d) of the Act)

n) Training programs shall not be implemented prior to initial Department approval.

o) Application for initial approval of facility-based and non-facility-based training programs shall be in writing and shall include:

- 1) An outline containing the methodology, content, and objectives for the training program. The outline shall address the curriculum requirements set forth in subsection (j) of this Section for each unit included in the program;

2) A schedule for the training program;

3) Resumes describing the education, experience, and qualifications of each program instructor, including a copy of any valid Illinois licenses, as applicable; and

4) A copy or description of the tools that will be used to evaluate competency.

p) The Department will evaluate the initial application and proposed program for conformance to the program requirements contained in this Section. Based on this review, the Department will:

- 1) Grant approval of the proposed program for a period of two years;
- 2) Grant approval of the proposed program contingent on the receipt of additional materials, or revisions, needed to remedy any minor

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- deficiencies in the application or proposed program, which would not prevent the program from being implemented, such as deficiencies in the number of hours assigned to cover different areas of content, which can be corrected by submitting a revised schedule or outline; or
- 3) Deny approval of the proposed program based on major deficiencies in the application or proposed program that would prevent the program from being implemented, such as deficiencies in the qualifications of instructors or missing areas of content. Programs shall be resubmitted to the Department for review within 60 days prior to expiration of program approval.
- r) If the Department finds that an approved program does not comply with the requirements of this Section, the Department will notify the facility in writing of non-compliance of the program and the reasons for the finding.
- s) If the Department finds that any conditions stated in the written notice of non-compliance issued under subsection (r) of this Section have not been corrected within 30 days after the date of issuance of such notice, the Department will revoke its approval of the program.
- t) Any change in program content or objectives shall be submitted to the Department at least 30 days prior to program delivery. The Department will review the proposed change based on the requirements of this Section and will either approve or disapprove the change. The Department will notify the facility in writing of the approval or disapproval.
- u) A person seeking employment as a resident attendant is subject to the Health Care Worker Background Check Act (Section 3-206.03(f) of the Act) and Section 390.681 of this Part.

(Source: Added at 24 Ill. Reg. 124.003, effective \_\_\_\_\_)

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- 1) Heading of the Part: Sheltered Care Facilities Code
- 2) Code Citation: 77 Ill. Adm. Code 330
- 3) Section Numbers: Adopted Action:  
330.160 Amendment  
330.290 Repealer  
330.911 Amendment  
330.1310 Amendment  
330.1340 New Section  
APPENDIX D Repealer
- 4) Statutory Authority: Nursing Home Care Act [210 ILCS 45]
- 5) Effective date of Amendments: November 1, 2000
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain any incorporations by reference? No
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal was Published in Illinois Register: March 24, 2000 - 24 Ill. Reg. 4864
- 10) Has JCAR issued a Statement of Objection to these amendments? No
- 11) Differences between proposal and final version:  
"Association for Continuing Education and Training" was added.  
1. In Section 330.160, "January 15, 1999)" was stricken.  
2. In Section 330.1310(a), "and" was added after "resources".  
3. In Section 330.1310(c)(2), "Licensed Social Worker (LSW) or" was added after "or a".  
4. In Section 330.1310(c)(3), "an" was added after "as".  
5. In Section 330.1310(c)(4), "160" was changed to "180".  
6. In Section 330.1310(c)(4), "Council...Units" was deleted and "Association for Continuing Education and Training" was added.  
7. In Section 330.1310(c)(4), "previously" was added after "have".

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8. In Section 330.1310(c)(4), "sponsored . . . Professionals" was deleted.
9. In Section 330.1310(d), "for" was stricken and "if" was added; "to participate" was stricken and "participants" was added.
10. In Section 330.1310(e), "comprehensive" was deleted.
11. In Section 330.1310(f), "development" was changed to "development".
12. In Section 330.1310(g), "interest" was changed to "interests".
13. In Section 330.1310(i), "while they are in the facility" was moved from the fourth line and inserted after "activities" in the third line.
14. In Section 330.1340(b), "comprehensive" was deleted.
15. In Section 330. Appendix D, columns were aligned
16. In the table of contents, "330.163 Alzheimer's Special Care Disclosure" was added.
17. In Section 330.911(e), a comma was added after "determination".
18. In Section 330.1310(a), "the fullest possible" was deleted.
19. In Section 330.1310(a), "and" was added after "resources"; "maximize the" was deleted; "benefits" was changed to "benefit".
20. In Section 330.1310(a), "to" was deleted.
21. In Section 330.1310(a), "and preferences" was added after "interests".
22. In Section 330.1310(c)(4), "after November 1, 2000" was added after "director".
23. In Section 330.1310(c)(4), "guidelines of the" was added after "the".
24. In Section 330.1310(c)(4), "36-hour basic orientation course, a" was added after "taken a".

The following changes were made in response to comments and suggestions of JCAR:

- 1 In Section 330.911(l), "from a source other than a non-fingerprint check" was added after "knowledge".

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2. In Section 330.1310(c)(4), "qualified as a CTRS, OTR/L, LSW or LCSW as" was added after "individuals".
3. In Section 330.1310(c)(4), the comma after "programs" was changed to a semicolon.
4. In Section 330.1310(d), "participants" was changed to "participates".
5. In Section 330.1310(h)(2), "simulation" was changed to "stimulation". In addition, various typographical, grammatical and form changes were made in response to the comments from JCAR.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? All agreed-upon changes have been made.
- 13) Will these amendments replace emergency amendments currently in effect?  
No
- 14) Are there any other amendments pending on this Part? Yes  

Section Numbers	Proposed Action	Ill. Reg. Citation
330.1130	Amendment	24 Ill. Reg. 13300
- 15) Summary and purpose of the amendments: Section 330.16' (Issuance of a Renewal License) is amended to conform language concerning license renewal to the language of Section 3-115 of the Act, as amended by Public Act 91-215, effective July 20, 1999.  

Section 330.290 (Quarterly List of Violators) is repealed because it is primarily statutory language that directs the Department. Repeal of this Section will not affect the Department's statutory obligation to prepare a quarterly list of violators.

Section 330.991 (Health Care Worker Background Check) is amended to implement P.A. 91-598 (effective January 1, 2000). A facility will be prohibited from hiring, employing or retaining a person with direct care duties if the facility becomes aware that the individual has been convicted in another state of committing or attempting to commit an offense that has the same of similar elements as a disqualifying crime under the Health Care Worker Background Check Act, as verified by court records, records from a State agency, or an FBI criminal history record check. The facility is not, however, obligated to conduct background checks in other states in which an employee has resided. The definition of "direct care" is amended, and guidelines are included to assist facilities in determining which employees provide direct care. The rules are also amended to clarify the status of employees during the waiver process.



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Section 330.1310 (Activity Program) is substantially revised to enhance activity programs for long-term care residents. Activity personnel working under the direction of the activity director will be required to have a minimum of 10 hours of in-service training per calendar year or employment year, directly related to recreation/activities. Requirements for consultation and training for activity directors are included, as well as requirements for an assessment of each resident and participation in care planning by activity staff. Examples of specific types of activities are included.

Section 330.1340 (Volunteer Program) is added to set forth requirements for volunteer programs, including an orientation program.

Section 330. Appendix D (Criteria for Activity Directors Who Need Only Minimal Consultation) is repealed. Consultation requirements are included in Section 330.1310.

16) Information and questions regarding these adopted amendments shall be directed to:

Paul Thompson  
Division of Legal Services  
Department of Public Health  
535 West Jefferson, Fifth Floor  
Springfield, Illinois 62761  
217/782-2043  
e-mail: rules@idph.state.il.us

The full text of the adopted amendments begins on the next page:

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TITLE 77: PUBLIC HEALTH  
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH  
SUBCHAPTER c: LONG-TERM CARE FACILITIES

## PART 330

## SHELTERED CARE FACILITIES CODE

## SUBPART A: GENERAL PROVISIONS

Section	
330.110	General Requirements
330.120	Application for License
330.130	Licensee
330.140	Issuance of an Initial License For a New Facility
330.150	Issuance of an Initial License Due to a Change of Ownership
330.160	Issuance of a Renewal License
330.163	Alzheimer's Special Care Disclosure
330.165	Criteria for Adverse Licensure Actions
330.170	Denial of Initial License
330.175	Denial of Renewal of License
330.180	Revocation of License
330.190	Experimental Program Conflicting With Requirements
330.200	Inspections, Surveys, Evaluations and Consultation
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## TABLE A

AUTHORITY: Implementing and authorized by the Nursing Home Care Act [210 ILCS

45].

SOURCE: Emergency rules adopted at 4 Ill. Reg. 10, p. 807, effective March 1, 1980, for a maximum of 150 days; adopted at 4 Ill. Reg. 30, p. 933, effective July 28, 1980; amended at 6 Ill. Reg. 5981, effective May 3, 1982; amended at 6 Ill. Reg. 8198, effective June 29, 1982; amended at 6 Ill. Reg. 14547, effective November 8, 1982; amended at 6 Ill. Reg. 14681, effective November 15, 1982; amended at 7 Ill. Reg. 1963, effective January 28, 1983; amended at 7 Ill. Reg. 6973, effective May 17, 1983; amended at 7 Ill. Reg. 15825, effective November 15, 1983; amended at 8 Ill. Reg. 15596, effective August 15, 1984; amended at 8 Ill. Reg. 15941, effective August 17, 1984; codified at 8 Ill. Reg. 19790; amended at 8 Ill. Reg. 24241, effective November 28, 1984; amended at 8 Ill. Reg. 24696, effective December 7, 1984; amended at 9 Ill. Reg. 2952, effective February 25, 1985; amended at 9 Ill. Reg. 10974, effective July 1, 1985; amended at 11 Ill. Reg. 16879, effective October 1, 1987; amended at 12 Ill. Reg. 1017, effective December 24, 1987; amended at 12 Ill. Reg. 16870, effective October 1, 1988; emergency amendment at 12 Ill. Reg. 18939, effective October 24, 1988, for a maximum of 150 days; emergency expired March 23, 1989; amended at 13 Ill. Reg. 6562, effective April 17, 1989; amended at 13 Ill. Reg.

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19580, effective December 1, 1989; amended at 14 Ill. Reg. 14928, effective October 1, 1990; amended at 15 Ill. Reg. 516, effective January 1, 1991; amended at 16 Ill. Reg. 651, effective January 1, 1992; amended at 16 Ill. Reg. 14370, effective September 3, 1992; emergency amendment at 17 Ill. Reg. 2405, effective February 3, 1993, for a maximum of 150 days; emergency expired on July 3, 1993; emergency amendment at 17 Ill. Reg. 8000, effective May 6, 1993, for a maximum of 150 days; emergency expired on October 3, 1993; amended at 17 Ill. Reg. 15089, effective September 3, 1993; amended at 17 Ill. Reg. 16180, effective January 1, 1994; amended at 17 Ill. Reg. 19258, effective October 26, 1993; amended at 17 Ill. Reg. 19576, effective November 4, 1993; amended at 17 Ill. Reg. 21044, effective November 20, 1993; amended at 18 Ill. Reg. 1475, effective January 14, 1994; amended at 18 Ill. Reg. 15851, effective October 15, 1994; amended at 19 Ill. Reg. 11567, effective July 29, 1995; emergency amendment at 20 Ill. Reg. 552, effective January 1, 1996, for a maximum of 150 days; emergency expired on May 29, 1996; amended at 20 Ill. Reg. 10125, effective July 15, 1996; amended at 20 Ill. Reg. 12160, effective September 10, 1996; amended at 22 Ill. Reg. 4078, effective February 13, 1998; amended at 22 Ill. Reg. 7203, effective April 15, 1998; amended at 22 Ill. Reg. 16594, effective September 18, 1998; amended at 23 Ill. Reg. 1085, effective January 15, 1999; amended at 23 Ill. Reg. 8064, effective July 15, 1999; amended at 24 Ill. Reg. 17464, effective \_\_\_\_\_.

## SUBPART A: GENERAL PROVISIONS

## Section 330.160 Issuance of a Renewal License

At least 120 days but not more than 150 days prior to license expiration, the licensee shall submit an application for renewal of the license in such form and containing such information as the Department requires. If the application is approved, and the facility is in compliance with all other licensure requirements, the license shall be renewed in accordance with Section 3-110 of the Act for an additional one-year or two-year period. The renewal application shall not be approved unless the applicant has provided to the Department an accurate disclosure document in accordance with the Alzheimer's Special Care Disclosure Act [220 ILCS 4] and Section 330.163 of this Part, if applicable. (Section 3-115 of the Act)

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 330.290 Quarterly List of Violators (Repealed)

a) ~~The Department shall prepare on a quarterly basis a list containing the names and addresses of all facilities against which the Department during the previous quarter has~~  
+ ) ~~issued a notice of penalty assessment for a level A violation as provided in Section 330-286 of this Part and Section 3-305 of the Act~~

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- 2) issued-a notice-of--revocation of--the--facility's--license-as provided-in-Section-330-180-of-this-Part-and-Section-3-119-of-the Act;
- 3) issued-a notice-refusing-renewal of--the--facility's--license-as provided-in-Section-330-175-of-this-Part-and-Section-3-119-of-the Act;
- 4) issued-a notice-to-suspend the-facility's-license-as-provided-in Section-3-119-of-the-Act;
- 5) issued-a conditional-license to-the-facility-based-on-violations which-were-not-corrected-as-provided-in-Section-330-160-of-this Part-and-Section-3-313-of-the-Act; except where the terms-of--the conditional--license--have--been--stayed--pursuant--to--Section 330-160(d);
- 6) Placed-a monitor in-the-facility-as-provided-in-Section-330-270 of--this-Part--and--Section-3-501--of--the-Act--for-one-of-the following-reasons:
- A) The-facility-is-operating-without-a-license;
- B) The-Department-has-revoked-or-refused-to-renew--the--license of-the-facility;
- C) The-facility-is-closing-or-has-informed-the-Department-that it-intends-to-close-and-adequate-arrangements-for-relocation of-residents-have-not-been-made-at-least-30-days--prior--to closure;
- D) The-Department--determines-that-an-emergency-exists-and has issued-a-notice-of--revocation-or--nonrenewal against--the facility's--license;
- 7) Initiated-an action-to-appoint-a-receiver;
- 8) Recommended--to--the-Director-of-the-Department-of-Public-Aid--or the-Secretary-of-the-United-States-Department-of-Health-and-Human Services--the-decertification--for--violations--in-relation-to patient-care-of--a-facility-pursuant-to-Gilges-XVIII-and-XIX-of the-Federal-Social-Security-Act (42-U.S.C.-1395-et-seq--and--1396 et-seq--)--(Section-3-304(a)-of-the-Act)
- b) In--addition--to--the-name-and-address-of-the-facility--the-list-shall include-the-name-and-address-of-the-person-or--licensee--against-whom the-action-has-been-initiated--a-self-explanatory-summary-of-the-facts which--warranted--the--initiation--of--each-action--the-type-of-action initiated--the-date-of-the-initiation-of-the-action--the-amount-of-the penalty-sought-to-be-assessed--if-any--and-the-final-disposition--of the-action--if-completed. (Section-3-304(b)-of-the-Act)

(Source: Repealed at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

SUBPART D: PERSONNEL

Section 330.911 Health Care Worker Background Check

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- a) The facility shall not knowingly hire any individual in a position with duties involving direct care for residents if that person has been convicted of committing or attempting to commit one or more of the following offenses (Section 25(a) of the Health Care Worker Background Check Act [225 ILCS 46/25]):
- 1) Solicitation of murder, solicitation of murder for hire (Sections 8-1.1 and 8-1.2 of the Criminal Code of 1961 [720 ILCS 5/8-1.1 and 8-1.2] (formerly Ill. Rev. Stat. 1961, ch. 38, pars. 8-1.1 and 8-1.2));
- 2) Murder, homicide, manslaughter or concealment of a homicidal death (Sections 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2 and 9-3.3 of the Criminal Code of 1961 [720 ILCS 5/9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2 and 9-3.3] (formerly Ill. Rev. Stat. 1961, ch. 38, pars. 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3); Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 3, 236, 358, 360, 361, 362, 363, 364, 364a, 365, 370, 373, 373a, 417, and 474));
- 3) Kidnaping or child abduction (Sections 10-1, 10-2, 10-5, and 10-7 of the Criminal Code of 1961 [720 ILCS 5/10-1, 10-2, 10-5 and 10-7] (formerly Ill. Rev. Stat. 1961, ch. 38, pars. 10-1, 10-2, 10-5, and 10-7); Ill. Rev. Stat. 1985, ch. 38, par. 10-6; Ill. Rev. Stat. 1961, ch. 38, pars. 384 to 386));
- 4) Unlawful restraint or forcible detention (Sections 10-3, 10-3.1, and 10-4 of the Criminal Code of 1961 [720 ILCS 5/10-3, 10-3.1, and 10-4] (formerly Ill. Rev. Stat. 1961, ch. 38, pars. 10-3, 10-3.1, and 10-4); Ill. Rev. Stat. 1961, ch. 38, pars. 252, 252.1, and 252.4));
- 5) Indecent solicitation of a child, sexual exploitation of a child, exploitation of a child, child pornography (Section 11-6, 11-9.1, 11-19.2, and 11-20.1 of the Criminal Code of 1961 [720 ILCS 5/11-6, 11-9.1, 11-19.2, and 11-20.1] (formerly Ill. Rev. Stat. 1961, ch. 38, pars. 11-6, 11-19.2, and 11-20.1); Ill. Rev. Stat. 1983, ch. 38, par. 11-20a; Ill. Rev. Stat. 1961, ch. 38, pars. 103 and 104));
- 6) Assault, battery, heinous battery, tampering with food, drugs or cosmetics, or infliction of great bodily harm (Sections 12-1, 12-2, 12-3, 12-3.1 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7 of the Criminal Code of 1961 [720 ILCS 5/12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7] (formerly Ill. Rev. Stat. 1961, ch. 38, pars. 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7); Ill. Rev. Stat. 1961, ch. 38, pars. 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7; Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 55, 56, and 56a to 60b));
- 7) Aggravated stalking (Section 12-7.4 of the Criminal Code of 1961 [720 ILCS 5/12-7.4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-7.4));
- 8) Home invasion (Section 12-11 of the Criminal Code of 1961 [720

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- ILCS 5/12-11 (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-11);
- 9) Sexual assault or sexual abuse (Sections 12-13, 12-14, 12-14.1, 12-15, and 12-16 of the Criminal Code of 1961 [720 ILCS 5/12-13, 12-14, 12-14.1, 12-15, and 12-16] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-1, 11-2, 11-3, 11-4, 11-5, 12-13, 12-14, 12-15, and 12-16; Ill. Rev. Stat. 1985, ch. 38, pars. 11-1, 11-4, and 11-4.1; Ill. Rev. Stat. 1961, ch. 38, pars. 109, 141, 142, 490, and 491));
- 10) Abuse or gross neglect of a long-term care facility resident (Section 12-19 of the Criminal Code of 1961 [720 ILCS 5/12-19] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-19));
- 11) Criminal neglect of an elderly or disabled person (Section 12-21 of the Criminal Code of 1961 [720 ILCS 5/12-21] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-21));
- 12) Endangering the life or health of a child (Section 12-21.6 of the Criminal Code of 1961 [720 ILCS 5/12-21.6] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354; Ill. Rev. Stat. 1961, ch. 38, par. 95));
- 13) Ritual mutilation, ritualized abuse of a child (Sections 12-32 and 12-33 of the Criminal Code of 1961 [720 ILCS 5/12-32 and 12-33] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-32 and 12-33));
- 14) Theft, retail theft (Sections 16-1 and 16A-3 of the Criminal Code of 1961 [720 ILCS 5/16-1 and 16A-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 16-1 and 16A-3; Ill. Rev. Stat. 1961, ch. 38, pars. 62, 207 to 218, 240 to 244, 246, 253, 254-1, 258, 262, 262a, 273, 290, 291, 301a, 354, 387 to 388b, 389, 393 to 400, 404a to 404c, 438, 492 to 496));
- 15) Financial exploitation of an elderly or disabled person (Section 16-1.3 of the Criminal Code of 1961 [720 ILCS 5/16-1.3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 16-1.3));
- 16) Forgery (Section 17-3 of the Criminal Code of 1961 [720 ILCS 5/17-3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 17-3; Ill. Rev. Stat. 1961, ch. 38, pars. 151 and 277 to 286));
- 17) Robbery, armed robbery (Sections 18-1 and 18-2 of the Criminal Code of 1961 [720 ILCS 5/18-1 and 18-2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 18-1 and 18-2));
- 18) Vehicular hijacking, aggravated vehicular hijacking, aggravated robbery (Sections 18-3, 18-4, and 18-5 of the Criminal Code of 1961 [720 ILCS 5/18-3, 18-4, and 18-5]);
- 19) Burglary, residential burglary (Sections 19-1 and 19-3 of the Criminal Code of 1961 [720 ILCS 5/19-1 and 19-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 19-1 and 19-3; Ill. Rev. Stat. 1961, ch. 38, pars. 84 to 86, 88, and 501));
- 20) Criminal trespass to a residence (Section 19-4 of the Criminal Code of 1961 [720 ILCS 5/19-4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 19-4));

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- 21) Arson (Sections 20-1 and 20-1.1 of the Criminal Code of 1961 [720 ILCS 5/20-1 and 20-1.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 20-1 and 20-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 48 to 53 and 236 to 238));
- 22) Unlawful use of weapons, aggravated discharge of a firearm, or reckless discharge of a firearm (Sections 24-1, 24-1.2, and 24-1.5 of the Criminal Code of 1961 [720 ILCS 5/24-1, 24-1.2, and 24-1.5] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 24-1 and 24-1.2; Ill. Rev. Stat. 1961, ch. 38, pars. 152, 152a, 155, 155a to 158b, 414a to 414c, 414e, and 414g));
- 23) Armed violence - elements of the offense (Section 33A-2 of the Criminal Code of 1961 [720 ILCS 5/33A-2] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 33A-2));
- 24) Those provided in Section 4 of the Wrongs to Children Act (Section 4 of the Wrongs to Children Act [720 ILCS 150/4] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354));
- 25) Cruelty to children (Section 53 of the Criminal Jurisprudence Act [720 ILCS 115/53] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2368));
- 26) Manufacture, delivery or trafficking of cannabis, delivery of cannabis on school grounds, or delivery to person under 18; violation by person under 18 (Sections 5, 5.1, 5.2, 7, and 9 of the Cannabis Control Act [720 ILCS 550/5, 5.1, 5.2, 7, and 9] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 705.1, 705.2, 707, and 709)); or
- 27) Manufacture, delivery or trafficking of controlled substances (Sections 401, 401.1, 404, 405, 405.1, 407 and 407.1 of the Illinois Controlled Substances Act [720 ILCS 570/401, 401.1, 404, 405, 405.1, 407 and 407.1] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 1401, 1401.1, 1404, 1405, 1405.1, 1407, and 1407.1)).
- b) The facility shall not knowingly employ or retain any individual in a position with duties involving direct care for residents if that person has been convicted of committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) of this Section unless the applicant, employee or employer obtains a waiver pursuant to subsections (m)(\*) and (o)(\*) of this Section. (Section 25(a) of the Health Care Worker Background Check Act)
- c) A facility shall not hire, employ, or retain any individual in a position with duties involving direct care of residents if the facility becomes aware that the individual has been convicted in another state of committing or attempting to commit an offense that has the same or similar elements as an offense listed in subsection (a)(1) to (27) of this Section, as verified by court records, records from a State agency, or FBI criminal history record check. This shall not be construed to mean that a facility has an obligation to conduct a criminal history records check in other states in which an employee has resided. (Section 25(b) of the Act)
- d) For the purpose of this Section:



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- 1) "Applicant" means an individual seeking employment with a facility who has received a bona fide conditional offer of employment.
- 2) "Conditional offer of employment" means a bona fide offer of employment by a facility to an applicant, which is contingent upon the receipt of a report from the Department of State Police indicating that the applicant does not have a record of conviction of any of the criminal offenses listed in subsections (a)(1) to (27) of this Section.
- 3) "Direct care" means the provision of nursing care or assistance with feeding meals, dressing, movement, bathing, or other personal needs. ~~or--maintenance;--or--general--supervision--and oversight--of--the--physical--and--mental--well--being--of--an--individual who--is--incapable--of--managing--his--or--her--person--whether--or--not--a guardian--has--been--appointed--for--that--individual.~~
- 4) "Initiate" means the obtaining of the authorization for a record check from a student, applicant, or employee. (Section 15 of the Health Care Worker Background Check Act)

e) For purposes of the Health Care Worker Background Check Act, the facility shall establish a policy defining which employees provide direct care. In making this determination, the facility shall consider the following:

- 1) The employee's assigned job responsibilities as set forth in the employee's job description;
- 2) Whether the employee is required to or has the opportunity to be alone with residents, with the exception of infrequent or unusual occasions; and
- 3) Whether the employee's responsibilities include physical contact with residents, for example to provide therapy or to draw blood.

f) ~~Beginning January 1, 1996, when the facility makes a conditional offer of employment to an applicant who is not exempt under subsection (s)(4) of this Section for a position with duties that involve direct care for residents, the employer must initiate or have initiated on its behalf a Uniform Conviction Information Act (UCIA) criminal history record check for that applicant.~~ (Section 30(c) of the Health Care Worker Background Check Act) If the applicant is on the Department's Nurse Aide Registry in good standing and has had a UCIA criminal history record check within the last 12 months, the employer need not initiate another check.

g) ~~The facility shall transmit all necessary information and fees to the Illinois State Police within 10 working days after receipt of the authorization.~~ (Section 15 of the Health Care Worker Background Check Act)

h) ~~The facility may accept an authentic UCIA criminal history record check that has been conducted within the last 12 months rather than initiating a check as required in subsection (f)(4) of this Section.~~

i) ~~The request for a UCIA criminal history record check shall be made as prescribed by the Department of State Police. The applicant or~~

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employee must be notified of the following whenever a non-fingerprint-based UCIA criminal history record check is made:

- 1) That the facility shall request or have requested on its behalf a non-fingerprint-based UCIA criminal history record check pursuant to the Health Care Worker Background Check Act.
- 2) That the applicant or employee has a right to obtain a copy of the criminal records report from the facility, challenge the accuracy and completeness of the report, and request a waiver in accordance with subsection (m)(4) of this Section.
- 3) That the applicant, if hired conditionally, may be terminated if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the applicant's identity is validated and it is determined that the applicant or employee does not have a disqualifying criminal history record based on a fingerprint-based records check pursuant to subsection (k)(4) of this Section.
- 4) That the applicant, if not hired conditionally, shall not be hired if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the applicant's record is cleared based on a fingerprint-based records check pursuant to subsection (k)(4) of this Section.
- 5) That the employee may be terminated if the criminal records report indicates that the employee has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the employee's record is cleared based on a fingerprint-based records check pursuant to subsection (k)(4) of this Section.

j) ~~A facility may conditionally employ an applicant to provide direct care for up to three months pending the results of a UCIA criminal history record check.~~ (Section 30(g) of the Health Care Worker Background Check Act)

k) ~~An applicant or employee whose non-fingerprint-based UCIA criminal history record check indicates a conviction for committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) of this Section may request that the facility or its designee commence a fingerprint-based UCIA criminal records check by submitting any necessary fees and information in a form and manner prescribed by the Department of State Police.~~ (Section 35 of the Health Care Worker Background Check Act)

l) ~~A facility having actual knowledge from a source other than a non-fingerprint check that an employee has been convicted of committing or attempting to commit one of the offenses enumerated in Section 25 of the Act must initiate a fingerprint-based background check within 10 working days after acquiring that knowledge. The~~

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facility may continue to employ that individual in a direct care position, may reassign that individual to a non-direct care position, or may suspend the individual until the results of the fingerprint-based background check are received. (Section 30(d) of the Health Care Worker Background Check Act)

**m)†** An applicant, employee or employer may request a waiver to subsection (a), or (b) or (c) of this Section by submitting the following to the Department within five working days after the receipt of the criminal records report:

- 1) A completed fingerprint-based UCIA criminal records check form (Section 40(a) of the Health Care Worker Background Check Act) (which the Department will forward to the Illinois State Police); and

- 2) A certified check, money order or facility check made payable to the Department of State Police for the amount of money necessary to initiate a fingerprint-based UCIA criminal records check.

**n)†** The Department may accept the results of the fingerprint-based UCIA Criminal Records Check instead of the items required by subsections (m)†(1) and (2) above. (Section 40(a-5) of the Health Care Worker Background Check Act)

**o)†** The Department may grant a waiver based on mitigating circumstances, which may include:

- 1) The age of the individual at which the crime was committed;
- 2) The circumstances surrounding the crime;
- 3) The length of time since the conviction;
- 4) The applicant's or employee's criminal history since the conviction;
- 5) The applicant's or employee's work history;
- 6) The applicant's or employee's current employment references;
- 7) The applicant's or employee's character references;
- 8) Nurse Aide Registry records; and
- 9) Other evidence demonstrating the ability of the applicant or employee to perform the employment responsibilities competently and evidence that the applicant or employee does not pose a threat to the health or safety of residents. (Section 40(b) of the Health Care Worker Background Check Act)

**p)†** An individual shall not be employed in a direct care position from the time the employer receives the results of a non-fingerprint check containing disqualifying conditions until the time that the individual receives a waiver from the Department. If the individual challenges the results of the non-fingerprint check, the employer may continue to employ the individual in a direct care position if the individual presents convincing evidence to the employer that the non-fingerprint check is invalid. If the individual challenges the results of the non-fingerprint check, his or her identity shall be validated by a fingerprint-based records check in accordance with subsection (k) of this Section. An individual may not be employed in a direct care position during the pendency of a waiver request. (Section 40(d) of

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the Health Care Worker Background Check Act)

**q)†** A facility is not obligated to employ or offer permanent employment to an applicant, or to retain an employee who is granted a waiver. (Section 40(f) of the Health Care Worker Background Check Act)

**r)†** A facility may retain the individual in a direct care position if the individual presents clear and convincing evidence to the facility that the non-fingerprint-based criminal records report is invalid and if there is a good faith belief on the part of the employer that the individual did not commit an offense listed in subsections (a)(1) to (27) of this Section, pending positive verification through a fingerprint-based criminal records check. Such evidence may include, but not be limited to:

- 1) certified court records;
- 2) written verification from the State's Attorney's office that prosecuted the conviction at issue;
- 3) written verification of employment during the time period during which the crime was committed or during the incarceration period stated in the report;
- 4) a signed affidavit from the individual concerning the validity of the report; or
- 5) documentation from a local law enforcement agency that the individual was not convicted of a disqualifying crime.

**s)†** This Section shall not apply to:

- 1) An individual who is licensed by the Department of Professional Regulation or the Department of Public Health under another law of this State;
- 2) An individual employed or retained by a health care employer for whom a criminal background check is required by another law of this State; or
- 3) A student in a licensed health care field including, but not limited to, a student nurse, a physical therapy student, or a respiratory care student unless he or she is employed by a health care employer in a position with duties involving direct care for residents. (Section 20 of the Health Care Worker Background Check Act)

**t)†** An employer need not initiate an additional criminal background check for an employee if the employer initiated a criminal background check for the employee after January 1, 1996 and prior to January 1, 1998. This subsection applies only to persons employed prior to January 1, 1998. Any person newly employed on or after January 1, 1998 must receive a background check as required by Section 30 of the Health Care Worker Background Check Act. (Section 25.1 of the Health Care Worker Background Check Act)

**u)†** The facility must send a copy of the results of the UCIA criminal history record check to the State Nurse Aide Registry for those individuals who are on the Registry. (Section 30(b) of the Health Care Worker Background Check Act) The facility shall include the individual's Social Security number on the criminal history record



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check results.

v)† The facility shall retain on file for a period of 5 years records of criminal records requests for all employees. The facility shall retain the results of the UCIA criminal history records check and waiver, if appropriate, for the duration of the individual's employment. The files shall be subject to inspection by the Department. A fine of \$500 shall be imposed for failure to maintain these records. (Section 50 the Health Care Worker Background Check Act)

w)† The facility shall maintain a copy of the employee's criminal history record check results and waiver, if applicable, in the personnel file or other secure location accessible to the Department.

(Source: Amended at 24 Ill. Reg. [7.4], effective

## SUBPART F: RESTORATIVE SERVICES

## Section 330.1310 Activity Program

a) The facility shall provide an ongoing program of activities to meet the interests and preferences and the physical, mental and psychosocial well-being of each resident, in accordance with the resident's comprehensive assessment. The activities shall be coordinated with other services and programs to make use of both community and facility resources and to benefit the residents. There shall be a specific planned program of group and individual activities designed to encourage restoration to self-care and maintenance of normal activity which is geared to the individual's needs. Activities shall be available daily and for a reasonable amount of time. Residents shall be given an opportunity to contribute to planning, preparation, conducting, cleanup, and critique of the program. (B)

b) Activity personnel shall be provided to meet the needs of the residents and the program. Activity staff time each week shall total not less than 45 minutes multiplied by the number of residents in the facility. This time shall be spent in providing activity programming as described in subsection (e) of this Section as well as the planning and directing of the program. The time spent in the performance of other duties not related to the activity program shall not be counted as part of the required activity staff time. (in a facility whose residents participate in regularly scheduled therapeutic or employment or sheltered workshop, the minimum hours per week of activity staff time may be reduced. The reduction shall be calculated by multiplying the number of residents in the facility who participate in such programs by the percentage of the day these residents spend in such programs.)

1) In a facility whose residents participate in regularly scheduled

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therapeutic programs outside the facility, such as school, employment or sheltered workshop, the minimum hours per week of activity staff time may be reduced. The reduction shall be calculated by multiplying the number of residents in the facility who participate in such programs by the percentage of the day that these residents spend in such programs.

2) Activity personnel working under the direction of the activity director shall have a minimum of 10 hours of in-service training per calendar or employment year, directly related to recreation/activities. In-service training may be provided by qualified facility staff and/or consultants, or may be obtained from college or university courses, seminars and/or workshops, educational offerings through professional organizations, similar educational offerings or any combination thereof.

## c) Activity Director and Consultation

1) A ~~where~~ ~~shall be~~ a trained staff person shall be designated as activity director and shall be responsible for planning and directing the activities program. This person shall be regularly scheduled to be on duty in the facility at least four days per week.

2) If the activity director ~~this person~~ is not a Certified Therapeutic Recreation Specialist (CTRS), Occupational Therapist Registered and Licensed (OTR/L), or a Licensed Social Worker (LSW) or Licensed Clinical Social Worker (LCSW) who has ~~Registered Occupational Therapist, a Therapeutic Recreation Specialist, or a Certified Social Worker with specialized course work coursework~~ in social group work, the facility shall have a written agreement with a person from one of those disciplines to provide consultation to the activity director and/or activity department Activity Director at least monthly, in order to ensure ~~make sure~~ that the activity programming meets the needs of the residents.

3) Any person designated as an activity director Activity Director ~~who is responsible for planning and directing the activities program~~ hired after December 24, 1987, shall have a high school diploma or equivalent.

4) Except for individuals qualified as a CTRS, OTR/L, LSW or LCSW as listed in subsection (c)(2) of this Section, any person hired as an activity director after November 1, 2000 shall have taken a 36-hour basic orientation course or shall register to take a 36-hour basic orientation course within 90 days after employment and shall complete the course within 180 days after employment. This course shall be recognized by an accredited college or university or a nationally recognized continuing education sponsor following the guidelines of the International Association for Continuing Education and Training and include at least the following: resident rights; activity care planning for quality of life, human wellness and self-esteem; etiology and symptomatology



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of persons who are aged, developmentally disabled or mentally ill; therapeutic approaches; philosophy and design of activity programs; activity program resources; program evaluation; practitioner behavior and ethics; resident assessment and supportive documentation; standards and regulations concerning activity programs; management and administration. Individuals who have previously taken a 36-hour basic orientation course, a 42-hour basic activity course or a 90-hour basic education course shall be considered to have met this requirement.

5) The activity director shall have a minimum of ten hours of continuing education per year pertaining to activities programming.

5) ~~Consultation--will--be--required--only--every--six--months--when--the--activity--director--meets--or--exceeds--the--criteria--in--Appendix B--Criteria--for--Activity--Directors--Who--Need--Only--Minimal--Consultation--(See--Section--330-926(b)--for--consultant--services--when--required).~~

6) Consultation shall be required only quarterly when the activity director meets or exceeds the following criteria:

- A) High school diploma or equivalent, five years of full-time or 10,000 hours of part-time experience in activities (three years of that experience as an activity director), and completion of a basic orientation course of at least 36 hours; or
- B) A two-year associate's degree, three years of experience as an activity director, and completion of a basic orientation course of at least 36 hours; or
- C) A four-year degree, one year full-time experience as an activity director, and completion of a basic orientation course of at least 36 hours.

d) ~~Written~~ ~~There--shall--be--written~~ permission, with any contraindications stated, shall be given by the resident's physician if ~~for~~ the resident participates to participate in the activity program. Standing orders will be acceptable with individual contraindications noted. (B)

e) Activity program staff shall participate in the assessment of each resident, which shall include the following:

- 1) Background information, including education level, cultural/social issues, and spiritual needs;
  - 2) Current functional status, including communication status, physical functioning, cognitive abilities, and behavioral issues; and
  - 3) Leisure functioning, including attitude toward leisure, awareness of leisure resources, knowledge of activity skills, and social interaction skills and activity interests, both current and past.
- f) The activity staff shall participate in the development of an individualized plan of care addressing needs and interests of the residents, including activity/recreational goals and/or interventions.
- g) The facility shall provide a specific, planned program of

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individual (including self-initiated) and group activities that are aimed at improving, maintaining, or minimizing decline in the resident's functional status, and at promoting well-being. The program shall be designed in accordance with the individual resident's needs, based on past and present lifestyle, cultural/ethnic background, interests, capabilities, and tolerance. Activities shall be daily and shall reflect the schedules, choices, and rights of the residents (e.g., morning, afternoon, evenings and weekends). The residents shall be given opportunities to contribute to planning, preparing, conducting, concluding and evaluating the activity program. The activity program shall be multifaceted and shall reflect each individual resident's needs and be adapted to the resident's capabilities. The activity program philosophy shall encompass programs that provide stimulation or solace; promote physical, cognitive and/or emotional health; enhance, to the extent practicable, each resident's physical and mental status; and promote each resident's self-respect by providing, for example, activities that support self-expression and choice. Specific types of activities may include:

- 1) Physical activity (e.g., exercise, fitness, adapted sports);
  - 2) Cognitive stimulation/intellectual/educational activity (e.g., discussion groups, reminiscence, guest speakers, film, trivia, quizzes, table games, puzzles, writing, spelling, newsletter);
  - 3) Spiritual/religious activity (e.g., religious services, spiritual study groups, visits from spiritual support groups);
  - 4) Service activity (e.g., volunteer work for the facility, other individuals and/or the community);
  - 5) Sensory stimulation (e.g., tactile, olfactory, auditory, visual and gustatory);
  - 6) Community involvement (e.g., community groups coming into the facility for intergenerational programs, special entertainment and volunteer visits; excursions outside the facility to museums, sporting events, entertainment, parks);
  - 7) Expressive and creative arts/crafts (adapted to the resident's capabilities), music, movement/dance, horticulture, pet-facilitated therapy, drama, literary programs, art, cooking; celebrations, family volunteers); and
  - 9) Social activity (e.g., parties and seasonal activities).
- If residents participate in regularly scheduled therapeutic programs outside the facility (e.g., school, employment, or sheltered workshop), the residents' needs for activities while they are in the facility shall be met.
- j) Residents' participation in and response to the activity program shall be documented at least quarterly and included in the clinical record. The facility shall maintain current records of resident participation in the activity program.
- e) ~~the activity program should include at a minimum the following program~~

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**areas:**

- 1) ~~Recreational activities (examples:--games, both quiet and active; parties; outside entertainment);~~
- 2) ~~Gifts (applicable for both men and women)~~
- 3) ~~Religious activities (examples:--Bible study or discussion; Bible quizzes;--and--games; hymn singing; grace at meals);--These are in addition to routine religious services.~~
- 4) ~~Service activities for community or--facility--(examples:--assist with--community--fund--drives;--projects for orphans; care of one's own area in the facility; helping to fold linen);~~
- 5) ~~Intellectual and educational activities (examples:--classes--in writing; arithmetic; grooming; and social graces; planned group discussion;--quizzes;--and--word--games;--resident--council; newsletter);~~
- 6) ~~Community activities (examples:--residents' participation--in community activities such as plays; church events; band concerts; tours);~~
- f) ~~A planned volunteer or auxiliary program that assists with the activities program shall be encouraged;--it shall be under the direction of a staff member in a supervisory capacity.~~
- g) ~~Documentation of resident's response to program shall be part of the resident's record as set forth in Section 330.1340(f)(1).~~

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 330.1340 Volunteer Program**

- a) If the facility has a volunteer or auxiliary program, a facility staff person shall direct the program. Community groups such as Boy and Girl Scouts, church groups and civic organizations that may occasionally present programs, activities, or entertainment in the facility shall not be considered volunteers for the purposes of this Section.
- b) Volunteers shall complete a standard orientation program, in accordance with their facility responsibilities and with the facility's policies and procedures governing the volunteer program. The orientation shall include, but not be limited to:
  - 1) Residents' rights;
  - 2) Confidentiality;
  - 3) Disaster preparedness (i.e., fire, tornado);
  - 4) Emergency response procedures;
  - 5) Safety procedures/precautions;
  - 6) Infection control; and
  - 7) Body mechanics.
- c) Volunteers shall respect all aspects of confidentiality.
- d) Volunteers shall be informed of and shall implement medical and physical precautions related to the residents with whom they work.

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- e) Volunteers shall not take the place of qualified staff (e.g., activity professionals, nursing assistants, or case workers).

(Source: Added at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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## Section 330. APPENDIX D Criteria for Activity Directors Who Need Only Minimal Consultation (Repealed)

Education	Total-Experience in-Activities	Experience-as Activity-Director	Basic Training
1.---High-School diploma-or equivalent	6 years	3 years	Completion-of a-basic orientation-course-of at-least-36-hrs.
2.---2-year associate degree	4 years	3 years	Completion-of a-basic orientation course-of at-least-36-hrs.
3.---Therapeutic Recreation Assistant-or Certified Occupational Therapy-Assistant	2 years	2 years	Completion-of a-basic orientation course-of at-least-36-hrs.
4.---4-year-degree	2 years	2 years	Completion-of a-basic orientation-course of-at at-least-36-hrs.

The--basic--orientation--course--for--activity-directors--shall--include--material  
related--to--life--span--changes--resident--rights--etiology--and--symptomatology--of  
aged--developementally--disabled--and--mentally--ill--residents--therapeutic  
approaches--communication--philosophy--and--design--of--activity--programs--activity  
program--resources--standards--and--regulations--documentation--and--management--and  
administration

(Source: Repealed at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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- 1) Heading of the Part: Skilled Nursing and Intermediate Care Facilities Code
- 2) Code Citation: 77 Ill. Adm. Code 300
- 3) 

<u>Section Numbers:</u>	<u>Adopted Action:</u>
300.160	Amendment
300.290	Repealer
300.661	Amendment
300.662	New Section
300.663	Amendment
300.1410	Amendment
300.1440	New Section
APPENDIX F	Repealer
- 4) Statutory Authority: Nursing Home Care Act [210 ILCS 45]
- 5) Effective date of amendments: November 1, 2000
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain any incorporations by reference? No
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal was Published in Illinois Register: March 24, 2000 - 24 Ill. Reg. 4889
- 10) Has JCAR issued a Statement of Objection to this amendment? No
- 11) Difference between proposal and final version: The following changes were made in response to comments received during the first notice or public comment period:
  1. In Section 300.160, "or two year period" was stricken.
  2. In Section 300.661(e), a comma was added after "determination".
  3. In Section 300.662(b)(3), "nursing" was changed to "nursing".
  4. In Section 300.662(c), "habilitation" was deleted and "nurse" was added.
  5. In Section 300.662(u), "3340.1377" was changed to "3300.661".
  6. In Section 300.663(a), "Program" was stricken and "programs" was added.



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7. In Section 300.663(b)(2) and (4), "written portion of the" was added.
8. Section 300.663(b)(5) was deleted.
9. In Section 300.1410(c)(2), "a Licensed Social Worker (LSW) or" was added.
10. In Section 300.1410(c)(2), "diciplines" was stricken and "disciplines" was added.
11. In Section 300.1410(c)(4), "160" was changed to "3180".
12. In Section 300.1410(c)(4), "Council of Accreditation of Continuing Education Units" was deleted and "Association for Continuing Education and Training" was added.
13. In Section 300.1410(d), "for" was stricken and "if" was added; "to participate" was stricken and "participates" was added.
14. In Section 300.1410(e), "comprehensive" was deleted and "the" was added.
15. In Section 300.1440(b), ", comprehensive" was deleted.
16. In the table of contents, "Section 300.163 Alzheimer's Special Care Disclosure" was added.
17. In Section 300.1410(a), "and preferences" was added after "interests".
18. In Section 300.1410(c)(4), "previously" was added after "have".
19. In Section 300.1410(c)(4), "36-hour basic orientation course, a" was added before "42-hour".
20. In Section 300.1410(c)(4), "sponsored . . . Professionals" was deleted.
21. In Section 300.1410(c)(4), "guidelines of the" was added before "International".
22. In Section 300.1410(c)(4), "shall" was added after "and".
23. In Section 300.1410(a), "the fullest possible" was deleted.
24. In Section 300.1410(a), "maximize the" was deleted; "benefits" was changed to "benefit".
25. In Section 300.1410(a), "to" was deleted.

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26. In Section 300.1410(c)(4), "after November 1, 2000" was added after "director".
  27. In Section 300.1410(i), "while they are in the facility" was moved to line 3 after "activities".
  28. In Section 300.1410(a), "and" was added after "resources".
- The following changes were made in response to comments and suggestions of JCAR:
1. In Section 300.662(h)(2), "a" was added after "perform".
  2. In Section 300.662(j)(1), (2) and (3), "necessary" was added before "equipment".
  3. In Section 300.1410(c)(4), "qualified as a CTRS, OTR/L, LSW or LCSW as" was added after "individuals".
  4. In Section 300.1410(c)(4), the comma after "programs" was changed to a semi-colon.
  5. In Section 300.1410(h)(2), "simulation" was changed to "stimulation".
- In addition, various typographical, grammatical and form changes were made in response to the comments from JCAR.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? All agreed-upon changes have been made.
  - 13) Will these amendments replace emergency amendments currently in effect? No
  - 14) Are there any other amendments pending on this Part? Yes
- | Section Numbers | Proposed Action | Ill. Reg. Citation |
|-----------------|-----------------|--------------------|
| 300.663         | Amendment       | 24 Ill. Reg. 13309 |
| 300.1020        | Amendment       | 24 Ill. Reg. 13309 |
- 15) Summary and purpose of the amendments: The rules in Part 300 regulate the licensure of skilled nursing and intermediate care facilities. Section 300.160 (Issuance of a Renewal License) is amended to conform language concerning license renewal to the language of Section 3-115 of the Act, as amended by Public Act 91-215, effective July 20, 1999.
- Section 300.290 (Quarterly List of Violators) is repealed because it is

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primarily statutory language that directs the Department. Repeal of this Section will not affect the Department's statutory obligation to prepare a quarterly list of violators.

Section 300.661 (Health Care Worker Background Check) is amended to implement P.A. 91-598 (effective January 1, 2000). A facility will be prohibited from hiring, employing or retaining a person with direct care duties if the facility becomes aware that the individual has been convicted in another state of committing or attempting to commit an offense that has the same or similar elements as a disqualifying crime under the Health Care Worker Background Check Act, as verified by court records, records from a State agency, or an FBI criminal history record check. The facility is not, however, obligated to conduct background checks in other states in which an employee has resided. The definition of "direct care" is amended, and guidelines are included to assist facilities in determining which employees provide direct care. The rules are also amended to clarify the status of employees during the waiver process.

Section 300.662 (Resident Attendants) is added to implement Public Act 91-461, effective August 6, 1999. This legislation allows facilities to employ resident attendants to assist residents with eating, drinking, and personal hygiene. The amendments include requirements for resident attendant training and competency and for assessment of residents to determine which residents can be assisted by resident attendants.

Section 300.663 (Registry of Certified Nurse Aides) is amended to add an equivalency for individuals who have completed the Direct Support Core Training Program as an employee of the Department of Human Services and, within 120 days after employment, successful completion of the Department-established nursing assistant competency test.

Section 300.1410 (Activity Program) is substantially revised to enhance activity programs for long-term care residents. Activity personnel working under the direction of the activity director will be required to have a minimum of 10 hours of in-service training per calendar year or employment year, directly related to recreation/activities. Requirements for consultation and training for activity directors are included, as well as requirements for a comprehensive assessment of each resident and participation in care planning by activity staff. Examples of specific types of activities are included.

Section 300.1440 (Volunteer Program) is added to set forth requirements for volunteer programs, including an orientation program.

Section 300.Appendix F (Criteria for Activity Directors who Need Only Minimal Consultation) is repealed. Consultation requirements are being included in Section 300.1410.

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16) Information and questions regarding these adopted amendments shall be directed to:

Paul Thompson  
Division of Legal Services  
Department of Public Health  
535 West Jefferson, Fifth Floor  
Springfield, Illinois 62761  
217/782-2043  
e-mail: rules@dph.state.il.us

The full text of the adopted amendments begins on the next page:

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TITLE 77: PUBLIC HEALTH  
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH  
SUBCHAPTER c: LONG-TERM CARE FACILITIES

PART 300  
SKILLED NURSING AND INTERMEDIATE CARE FACILITIES CODE

SUBPART A: GENERAL PROVISIONS

Section	
300.110	General Requirements
300.120	Application for License
300.130	Licensee
300.140	Issuance of an Initial License for a New Facility
300.150	Issuance of an Initial License Due to a Change of Ownership
300.160	Issuance of a Renewal License
300.163	Alzheimer's Special Care Disclosure
300.165	Criteria for Adverse Licensure Actions
300.170	Denial of Initial License
300.175	Denial of Renewal of License
300.180	Revocation of License
300.190	Experimental Program Conflicting With Requirements
300.200	Inspections, Surveys, Evaluations and Consultation
300.210	Filing an Annual Attested Financial Statement
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AUTHORITY: Implementing and authorized by the Nursing Home Care Act [210 ILCS 45].

SOURCE: Emergency rules adopted at 4 Ill. Reg. 10, p. 1066, effective March 1, 1980, for a maximum of 150 days; adopted at 4 Ill. Reg. 30, p. 311, effective July 28, 1980; emergency amendment at 6 Ill. Reg. 3229, effective March 8, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 5981, effective May 3, 1982; amended at 6 Ill. Reg. 6454, effective May 14, 1982; amended at 6 Ill. Reg. 8198, effective June 29, 1982; amended at 6 Ill. Reg. 11631, effective September 14, 1982; amended at 6 Ill. Reg. 14550 and 14554, effective November 8, 1982; amended at 6 Ill. Reg. 14684, effective November 15, 1982; amended at 7 Ill. Reg. 285, effective December 22, 1982; amended at 7 Ill. Reg. 1972,

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requirements, the license shall be renewed in accordance with Section 3-110 of the Act for an additional one-year or two-year period. The renewal application shall not be approved unless the applicant has provided to the Department an accurate disclosure document in accordance with the Alzheimer's Special Care Disclosure Act [220 ILCS 4] and Section 300.163 of this Part, if applicable. (Section 3-115 of the Act)

(Source: Amended at 24 Ill. Reg. . . . , effective . . . . )

Section 300.290 Quarterly List of Violators (Repealed)

- a) ~~The Department shall prepare on a quarterly basis a list containing the names and addresses of all facilities against which the Department during the previous quarter has:~~
  - 1) ~~issued a notice of penalty assessment for a level A violation as provided in Section 300.206 of this Part and Section 3-305.11 of the Act;~~
  - 2) ~~issued a notice of revocation of the facility's license as provided in Section 300.180 of this Part and Section 3-119 of the Act;~~
  - 3) ~~issued a notice refusing renewal of a the facility's license as provided in Section 300.175 of this Part and Section 3-119 of the Act;~~
  - 4) ~~issued a notice to suspend the facility's license as provided in Section 3-119 of the Act;~~
  - 5) ~~issued a conditional license to the facility based on violations which were not corrected as provided in Section 300.266 of this Part and Section 3-313 of the Act except where the terms of the conditional license have been stayed pursuant to Section 300.266(d);~~
  - 6) ~~placed a monitor in the facility as provided in Section 300.270 of this Part and Section 3-501 of the Act for one of the following reasons:~~
    - A) ~~the facility is operating without a license;~~
    - B) ~~the Department has revoked or refused to renew the license of the facility;~~
    - C) ~~the facility is closing or has informed the Department that it intends to close and adequate arrangements for relocation of residents have not been made at least 30 days prior to closure;~~
    - B) ~~The Department determines that an emergency exists and has issued a notice of revocation or nonrenewal against the facility's license;~~
    - 7) ~~initiated an action to appoint a receiver;~~
    - 8) ~~Recommended to the Director of the Department of Public Aid, or the Secretary of the United States Department of Health and Human Services, the decertification for violations in relation to~~

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effective January 28, 1983; amended at 7 Ill. Reg. 8579, effective July 11, 1983; amended at 7 Ill. Reg. 15831, effective November 10, 1983; amended at 7 Ill. Reg. 15864, effective November 15, 1983; amended at 7 Ill. Reg. 16992, effective December 14, 1983; amended at 8 Ill. Reg. 15599, 15603, and 15606, effective August 15, 1984; amended at 8 Ill. Reg. 15947, effective August 17, 1984; amended at 8 Ill. Reg. 16999, effective September 5, 1984; codified at 8 Ill. Reg. 19766; amended at 8 Ill. Reg. 24186, effective November 29, 1984; amended at 8 Ill. Reg. 24668, effective December 7, 1984; amended at 8 Ill. Reg. 25102, effective December 14, 1984; amended at 9 Ill. Reg. 132, effective December 26, 1984; amended at 9 Ill. Reg. 4087, effective March 15, 1985; amended at 9 Ill. Reg. 11049, effective July 1, 1985; amended at 11 Ill. Reg. 16927, effective October 1, 1987; amended at 12 Ill. Reg. 1052, effective December 24, 1987; amended at 12 Ill. Reg. 16811, effective October 1, 1988; emergency amendment at 12 Ill. Reg. 18477, effective October 24, 1988, for a maximum of 150 days; emergency expired March 23, 1989; amended at 13 Ill. Reg. 4684, effective March 24, 1989; amended at 13 Ill. Reg. 5134, effective April 1, 1989; amended at 13 Ill. Reg. 20089, effective December 1, 1989; amended at 14 Ill. Reg. 14950, effective October 1, 1990; amended at 15 Ill. Reg. 554, effective January 1, 1991; amended at 16 Ill. Reg. 681, effective January 1, 1992; amended at 16 Ill. Reg. 5977, effective March 27, 1992; amended at 16 Ill. Reg. 17089, effective November 3, 1992; emergency amendment at 17 Ill. Reg. 2420, effective February 3, 1993, for a maximum of 150 days; emergency expired on July 3, 1993; emergency amendment at 17 Ill. Reg. 8026, effective May 6, 1993, for a maximum of 150 days; emergency expired on October 3, 1993; amended at 17 Ill. Reg. 15106, effective September 3, 1993; amended at 17 Ill. Reg. 16194, effective January 1, 1994; amended at 17 Ill. Reg. 19279, effective October 26, 1993; amended at 17 Ill. Reg. 19604, effective November 4, 1993; amended at 17 Ill. Reg. 21058, effective November 20, 1993; amended at 18 Ill. Reg. 1491, effective January 14, 1994; amended at 18 Ill. Reg. 15868, effective October 15, 1994; amended at 19 Ill. Reg. 11600, effective July 29, 1995; emergency amendment at 20 Ill. Reg. 567, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 10142, effective July 15, 1996; amended at 20 Ill. Reg. 12208, effective September 10, 1996; amended at 21 Ill. Reg. 15000, effective November 15, 1997; amended at 22 Ill. Reg. 4094, effective February 13, 1998; amended at 22 Ill. Reg. 7218, effective April 15, 1998; amended at 22 Ill. Reg. 16609, effective September 18, 1998; amended at 23 Ill. Reg. 1103, effective January 15, 1999; amended at 23 Ill. Reg. 8106, effective July 15, 1999; amended at 24 Ill. Reg. 17341, effective . . . . .

SUBPART A: GENERAL PROVISIONS

Section 300.160 Issuance of a Renewal License

At least 120 days but not more than 150 days prior to license expiration, the licensee shall submit an application for renewal of the license in such form and containing such information as the Department requires. If the application is approved, and the facility is in compliance with all other licensure



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*patient-care-of-a-facility-pursuant-to-titles-xviii-and-xix-of the-federal-social-security-act- (42-U.S.C.-1395-et-seq-and-1396 et-seq)- (Section-3-304(a)-of-the-Act)*

b) *In-addition-to--the-name-and-address-of-the-facility--the-list-shall include-the-name-and-address-of-the-person-or-licensee-against-whom the-action-has-been-initiated--a-self-explanatory-summary-of-the-facts which-warranted-the-initiation-of-each-action--the-type-of-action initiated--the-date-of-the-initiation-of-the-action--the-amount-of-the penalty-sought-to-be-assessed--if-any--and-the-final-disposition-of-the-action--if-completed- (Section-3-304(b)-of-the-Act)*

(Source: Repealed at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART C: POLICIES

## Section 300.661 Health Care Worker Background Check

a) The facility shall not knowingly hire any individual in a position with duties involving direct care for residents if that person has been convicted of committing or attempting to commit one or more of the following offenses (Section 25(a) of the Health Care Worker Background Check Act [225 ILCS 46/25]):

- 1) Solicitation of murder, solicitation of murder for hire (Sections 8-1.1 and 8-1.2 of the Criminal Code of 1961 [720 ILCS 5/8-1.1 and 8-1.2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 8-1.1 and 8-1.2));
- 2) Murder, homicide, manslaughter or concealment of a homicidal death (Sections 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3 of the Criminal Code of 1961 [720 ILCS 5/9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2 and 9-3.3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3); Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 3, 236, 358, 360, 361, 362, 363, 364, 364a, 365, 370, 373, 373a, 417, and 474));
- 3) Kidnaping or child abduction (Sections 10-1, 10-2, 10-5 and 10-7 of the Criminal Code of 1961 [720 ILCS 5/10-1, 10-2, 10-5, and 10-7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-1, 10-2, 10-5, and 10-7); Ill. Rev. Stat. 1985, ch. 38, par. 10-6; Ill. Rev. Stat. 1961, ch. 38, pars. 384 to 386));
- 4) Unlawful restraint or forcible detention (Sections 10-3, 10-3.1, and 10-4 of the Criminal Code of 1961 [720 ILCS 5/10-3, 10-3.1, and 10-4] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-3, 10-3.1, and 10-4); Ill. Rev. Stat. 1961, ch. 38, pars. 252, 252.1, and 252.4));
- 5) Indecent solicitation of a child, sexual exploitation of a child, exploitation of a child, child pornography (Sections 11-6, 11-9.1, 11-19.2, and 11-20.1 of the Criminal Code of 1961 [720

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ILCS 5/11-6, 11-9.1, 11-19.2, and 11-20.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-6, 11-19.2, and 11-20.1; Ill. Rev. Stat. 1983, ch. 38, par. 11-20a; Ill. Rev. Stat. 1961, ch. 38, pars. 103 and 104));

- 6) Assault, battery, heinous battery, tampering with food, drugs or cosmetics, or infliction of great bodily harm (Sections 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7 of the Criminal Code of 1961 [720 ILCS 5/12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7); Ill. Rev. Stat. 1961, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 55, 56, and 56a to 60b));
- 7) Aggravated stalking (Section 12-7.4 of the Criminal Code of 1961 [720 ILCS 5/12-7.4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-7.4));
- 8) Home invasion (Section 12-11 of the Criminal Code of 1961 [720 ILCS 5/12-11] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-11));
- 9) Sexual assault or sexual abuse (Sections 12-13, 12-14, 12-14.1, 12-15, and 12-16 of the Criminal Code of 1961 [720 ILCS 5/12-13, 12-14, 12-14.1, 12-15, and 12-16] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-1, 11-2, 11-3, 11-4, 11-5, 12-13, 12-14, 12-15, and 12-16); Ill. Rev. Stat. 1985, ch. 38, pars. 11-1, 11-4, and 11-4.1; Ill. Rev. Stat. 1961, ch. 38, pars. 109, 141, 142, 490, and 491));
- 10) Abuse or gross neglect of a long-term care facility resident (Section 12-19 of the Criminal Code of 1961 [720 ILCS 5/12-19] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-19));
- 11) Criminal neglect of an elderly or disabled person (Section 12-21 of the Criminal Code of 1961 [720 ILCS 5/12-21] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-21));
- 12) Endangering the life or health of a child (Section 12-21.6 of the Criminal Code of 1961 [720 ILCS 5/12-21.6] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354; Ill. Rev. Stat. 1961, ch. 38, par. 95));
- 13) Ritual mutilation, ritualized abuse of a child (Sections 12-32 and 12-33 of the Criminal Code of 1961 [720 ILCS 5/12-32 and 12-33] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-32 and 12-33));
- 14) Theft, retail theft (Sections 16-1 and 16A-3 of the Criminal Code of 1961 [720 ILCS 5/16-1 and 16A-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 16-1 and 16A-3; Ill. Rev. Stat. 1961, ch. 38, pars. 62, 207 to 218, 240 to 244, 246, 253, 254.1, 259, 262, 262a, 273, 290, 291, 301a, 354, 387 to 388b, 389, 393 to 400, 404a to 404c, 438, 492 to 496));
- 15) Financial exploitation of an elderly or disabled person (Section

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- 1407.1.1)).
- b) The facility shall not knowingly employ or retain any individual in a position with duties involving direct care for residents if that person has been convicted of committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) of this Section unless the applicant, employee or employer obtains a waiver pursuant to subsections (m)(4) and (o)(4) of this Section. (Section 25(a) of the Health Care Worker Background Check Act)
- c) A facility shall not hire, employ, or retain any individual in a position with duties involving direct care of residents if the facility becomes aware that the individual has been convicted in another state of committing or attempting to commit an offense that has the same or similar elements as an offense listed in subsections (a)(1) to (27) of this Section, as verified by court records, records from a State agency, or an FBI criminal history record check. This shall not be construed to mean that a facility has an obligation to conduct a criminal history records check in other states in which an employee has resided. (Section 25(b) of the Act)
- d) For the purpose of this Section:
- 1) "Applicant" means an individual seeking employment with a facility who has received a bona fide conditional offer of employment.
  - 2) "Conditional offer of employment" means a bona fide offer of employment by a facility to an applicant, which is contingent upon the receipt of a report from the Department of State Police indicating that the applicant does not have a record of conviction of any of the criminal offenses listed in subsections (a)(1) to (27) of this Section.
  - 3) "Direct care" means the provision of nursing care or assistance with feeding meals, dressing, movement, bathing, or other personal needs, or maintenance, or general supervision--and oversight of the physical and mental well-being of an individual who is incapable of managing his or her person, whether or not a guardian has been appointed for that individual.
  - 4) "Initiate" means the obtaining of the authorization for a record check from a student, applicant, or employee. (Section 15 of the Health Care Worker Background Check Act)

- e) For purposes of the Health Care Worker Background Check Act, the facility shall establish a policy defining which employees provide direct care. In making this determination, the facility shall consider the following:
- 1) The employee's assigned job responsibilities as set forth in the employee's job description;
  - 2) Whether the employee is required to or has the opportunity to be alone with residents, with the exception of infrequent or unusual occasions; and
  - 3) Whether the employee's responsibilities include physical contact with residents, for example to provide therapy or to draw blood.

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- 16-1.3 of the Criminal Code of 1961 [720 ILCS 5/16-1.3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 16-1.3));
- 16) Forgery (Section 17-3 of the Criminal Code of 1961 [720 ILCS 5/17-3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 17-3; Ill. Rev. Stat. 1961, ch. 38, pars. 151 and 277 to 286));
- 17) Robbery, armed robbery (Sections 18-1 and 18-2 of the Criminal Code of 1961 [720 ILCS 5/18-1 and 18-2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 18-1 and 18-2));
- 18) Vehicular hijacking, aggravated vehicular hijacking, aggravated robbery (Sections 18-3, 18-4, and 18-5 of the Criminal Code of 1961 [720 ILCS 5/18-3, 18-4, and 18-5]);
- 19) Burglary, residential burglary (Sections 19-1 and 19-3 of the Criminal Code of 1961 [720 ILCS 5/19-1 and 19-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 19-1 and 19-3; Ill. Rev. Stat. 1961, ch. 38, pars. 84 to 86, 88, and 501));
- 20) Criminal trespass to a residence (Section 19-4 of the Criminal Code of 1961 [720 ILCS 5/19-4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 19-4));
- 21) Arson (Sections 20-1 and 20-1.1 of the Criminal Code of 1961 [720 ILCS 5/20-1 and 20-1.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 20-1 and 20-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. 48 to 53 and 236 to 238));
- 22) Unlawful use of weapons, aggravated discharge of a firearm, or reckless discharge of a firearm (Sections 24-1, 24-1.2, and 24-1.5 of the Criminal Code of 1961 [720 ILCS 5/24-1, 24-1.2, and 24-1.5] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 24-1 and 24-1.2; Ill. Rev. Stat. 1961, ch. 38, pars. 152, 152a, 155, 155a to 158b, 414a to 414c, 414e, and 414g));
- 23) Armed violence - elements of the offense (Section 33A-2 of the Criminal Code of 1961 [720 ILCS 5/33A-2] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 33A-2));
- 24) Those provided in Section 4 of the Wrongs to Children Act (Section 4 of the Wrongs to Children Act [720 ILCS 150/4] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354));
- 25) Cruelty to children (Section 53 of the Criminal Jurisprudence Act [720 ILCS 115/53] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2368));
- 26) Manufacture, delivery or trafficking of cannabis, delivery of cannabis on school grounds, or delivery to person under 18, violation by person under 18 (Sections 5, 5.1, 5.2, 7 and 9 of the Cannabis Control Act [720 ILCS 550/5, 5.1, 5.2, 7, and 9] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 705, 705.1, 705.2, 707, and 709)); or
- 27) Manufacture, delivery or trafficking of controlled substances (Sections 401, 401.1, 404, 405, 405.1, 407 and 407.1 of the Illinois Controlled Substance Act [720 ILCS 570/401, 401.1, 404, 405, 405.1, 407 and 407.1] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 1401, 1401.1, 1404, 1405, 1405.1, 1407, and



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f)† Beginning January 1, 1996, when the facility makes a conditional offer of employment to an applicant who is not exempt under subsection (s)† of this Section, for a position with duties that involve direct care for residents, the employer shall inquire of the Nurse Aide Registry as to the status of the applicant's Uniform Conviction Information Act (UCIA) criminal history record check. If a UCIA criminal history record check has not been conducted within the last 12 months, the facility must initiate or have initiated on its behalf a UCIA criminal history record check for that applicant. (Section 30(c) of the Health Care Worker Background Check Act)

g)• The facility shall transmit all necessary information and fees to the Illinois State Police within 10 working days after receipt of the authorization. (Section 15 of the Health Care Worker Background Check Act)

h)† The facility may accept an authentic UCIA criminal history record check that has been conducted within the last 12 months rather than initiating a check as required in subsection (f)† of this Section.

i)† The request for a UCIA criminal history record check shall be made as prescribed by the Department of State Police. The applicant or employee must be notified of the following whenever a non-fingerprint-based UCIA criminal history record check is made:

1) That the facility shall request or have requested on its behalf a non-fingerprint-based UCIA criminal history record check pursuant to the Health Care Worker Background Check Act.

2) That the applicant or employee has a right to obtain a copy of the criminal records report from the facility, challenge the accuracy and completeness of the report, and request a waiver in accordance with subsection (m)† of this Section.

3) That the applicant, if hired conditionally, may be terminated if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the applicant's identity is validated and it is determined that the applicant or employee does not have a disqualifying criminal history record based on a fingerprint-based records check pursuant to subsection (k)† of this Section.

4) That the applicant, if not hired conditionally, shall not be hired if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the applicant's record is cleared based on a fingerprint records check pursuant to subsection (k)† of this Section.

5) That the employee may be terminated if the criminal records report indicates that the employee has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) of this Section unless the employee's record is cleared based on a fingerprint-based records check pursuant to subsection

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(k)†† of this Section. (Section 30(e) and (f) of the Health Care Worker Background Check Act)

l)† A facility may conditionally employ an applicant to provide direct care for up to three months pending the results of a UCIA criminal history record check. (Section 30(g) of the Health Care Worker Background Check Act)

k)† An applicant or employee whose non-fingerprint-based UCIA criminal history record check indicates a conviction for committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) of this Section may request that the facility or its designee commence a fingerprint-based UCIA criminal records check by submitting any necessary fees and information in a form and manner prescribed by the Department of State Police. (Section 35 of the Health Care Worker Background Check Act)

l)† A facility having actual knowledge from a source other than a non-fingerprint check that an employee has been convicted of committing or attempting to commit one of the offenses enumerated in Section 25 of the Act must initiate a fingerprint-based background check within 10 working days after acquiring that knowledge. The facility may continue to employ that individual in a direct care position, may reassign that individual to a non-direct care position, or may suspend the individual until the results of the fingerprint-based background check are received. (Section 30(d) of the Health Care Worker Background Check Act)

m)† An applicant, employee or employer may request a waiver to subsection (a)† or (b) or (c) of this Section by submitting the following to the Department within five working days after the receipt of the criminal records report:

1) A completed fingerprint-based UCIA criminal records check form (Section 40(a) of the Health Care Worker Background Check Act) (which the Department will forward to the Illinois State Police); and

2) A certified check, money order or facility check made payable to the Department of State Police for the amount of money necessary to initiate a fingerprint-based UCIA criminal records check.

n)† The Department may accept the results of the fingerprint-based UCIA criminal records check instead of the items required by subsections (m)†(1) and (2) above. (Section 40(a-5) of the Health Care Worker Background Check Act)

o)† The Department may grant a waiver based on mitigating circumstances, which may include:

- 1) The age of the individual at which the crime was committed;
- 2) The circumstances surrounding the crime;
- 3) The length of time since the conviction;
- 4) The applicant's or employee's criminal history since the conviction;
- 5) The applicant's or employee's work history;
- 6) The applicant's or employee's current employment references;



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- 7) The applicant's or employee's character references;  
 8) Nurse Aide Registry records; and  
 9) Other evidence demonstrating the ability of the applicant or employee to perform the employment responsibilities competently and evidence that the applicant or employee does not pose a threat to the health or safety of residents. (Section 40(b) of the Health Care Worker Background Check Act)

pl)† An individual shall not be employed in a direct care position from the time that the employer receives the results of a non-fingerprint check containing disqualifying conditions until the time that the individual receives a waiver from the Department. If the individual challenges the results of the non-fingerprint check, the employer may continue to employ the individual in a direct care position if the individual presents convincing evidence to the employer that the non-fingerprint check is invalid. If the individual challenges the results of the non-fingerprint check, his or her identity shall be validated by a fingerprint-based records check in accordance with subsection (k) of this Section. ~~An individual may not be employed in a direct care position during the pendency of a waiver request.~~ (Section 40 to (d) of the Health Care Worker Background Check Act)

gl)† A facility is not obligated to employ or offer permanent employment to an applicant, or to retain an employee who is granted a waiver. (Section 40(f) of the Health Care Worker Background Check Act)

rl)† A facility may retain the individual in a direct care position if the individual presents clear and convincing evidence to the facility that the non-fingerprint-based criminal records report is invalid and if there is a good faith belief on the part of the employer that the individual did not commit an offense listed in subsections (a)(1) to (27) of this Section, pending positive verification through a fingerprint-based criminal records check. Such evidence may include, but not be limited to:

- 1) certified court records;
- 2) written verification from the State's Attorney's office that prosecuted the conviction at issue;
- 3) written verification of employment during the time period during which the crime was committed or during the incarceration period stated in the report;
- 4) a signed affidavit from the individual concerning the validity of the report; or
- 5) documentation from a local law enforcement agency that the individual was not convicted of a disqualifying crime.

sl)† This Section shall not apply to:

- 1) An individual who is licensed by the Department of Professional Regulation or the Department of Public Health under another law of this State;
- 2) An individual employed or retained by a health care employer for whom a criminal background check is required by another law of this State; or

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- 3) A student in a licensed health care field including, but not limited to, a student nurse, a physical therapy student, or a respiratory care student unless he or she is employed by a health care employer in a position with duties involving direct care for residents. (Section 20 of the Health Care Worker Background Check Act)

tl)† An employer need not initiate an additional criminal background check for an employee if the employer initiated a criminal background check for the employee after January 1, 1996 and prior to January 1, 1998. This subsection applies only to persons employed prior to January 1, 1998. Any person newly employed on or after January 1, 1998 must receive a background check as required by Section 30 of the Health Care Worker Background Check Act. (Section 25.1 of the Health Care Worker Background Check Act)

ul)† The facility must send a copy of the results of the UCIA criminal history record check to the State Nurse Aide Registry for those individuals who are on the Registry. (Section 30(b) of the Health Care Worker Background Check Act) The facility shall include the individual's Social Security number on the criminal history record check results.

vl)† The facility shall retain on file for a period of 5 years records of criminal records requests for all employees. The facility shall retain the results of the UCIA criminal history records check and waiver, if appropriate, for the duration of the individual's employment. The files shall be subject to inspection by the Department. A fine of \$500 shall be imposed for failure to maintain these records. (Section 50 of the Health Care Worker Background Check Act)

wl)† The facility shall maintain a copy of the employee's criminal history record check results and waiver, if applicable, in the personnel file or other secure location accessible to the Department.

(Source: Amended at 24 Ill. Reg. ~~1-1-1-1~~, effective ~~1-1-1-1~~)

## Section 300.662 Resident Attendants

a) As used in this Section, "resident attendant" means an individual who assists residents in a facility with the following activities:

- 1) eating and drinking; and
- 2) personal hygiene limited to washing a resident's hands and face, brushing and combing a resident's hair, oral hygiene, shaving residents with an electric razor, and applying makeup. (Section 3-206.03(a) of the Act)

b) The term "resident attendant" does not include an individual who:

- 1) is a licensed health professional or a registered dietitian;
- 2) volunteers without monetary compensation;
- 3) is a nursing assistant; or

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- 4) performs any nursing or nursing-related services for residents of a facility. (Section 3-206.03(b) of the Act)
- c) A facility may employ resident attendants to assist the nurse aides with the activities authorized under subsection (a) of this Section. The resident attendants shall not count in the minimum staffing requirements under this Part. (Section 3-206.03(b) of the Act)
- d) Each person employed by the facility as a resident attendant shall meet the following requirements:
- 1) Be at least 16 years of age; and
  - 2) Be able to speak and understand the English language or a language understood by a substantial percentage of the facility's residents.
- e) Resident attendants shall be supervised by and shall report to a nurse.
- f) The facility shall develop and implement policies and procedures concerning the duties of resident attendants in accordance with this Section, and shall document such duties in a written job description. As part of the comprehensive assessment (see Section 300.1220), each resident shall be evaluated to determine whether the resident may or may not be fed, hydrated or provided personal hygiene by a resident attendant. Such evaluation shall include, but not be limited to, the resident's level of care; the resident's functional status in regard to feeding, hydration, and personal hygiene; the resident's ability to cooperate and communicate with staff.
- h) A facility may not use on a full-time or other paid basis any individual as a resident attendant in the facility unless the individual:
- 1) has completed a Department-approved training and competency evaluation program encompassing the tasks the individual provides; and
  - 2) is competent to provide feeding, hydration, and personal hygiene services. (Section 3-206.03(c) of the Act) The individual shall be deemed to be competent if he/she is able to perform a hands-on return demonstration of the required skills, as determined by a nurse.
- i) The facility shall maintain documentation of completion of the training program and determination of competency for each person employed as a resident attendant.
- j) A facility-based training and competency evaluation program shall be conducted by a nurse and/or dietician and shall include one or more of the following units:
- 1) A feeding unit that is at least five hours in length and that is specific to the needs of the residents, and that includes the anatomy of digestion and swallowing; feeding techniques; developing an awareness of eating limitations; potential feeding problems and complications; resident identification; necessary equipment and materials; resident privacy; handwashing; use of disposable gloves; verbal and nonverbal communication skills;

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- behavioral issues and management techniques; signs of choking; signs and symptoms of aspiration; and Heimlich maneuver.
- 2) A hydration unit that is at least three hours in length and that includes the anatomy of digestion and swallowing; hydration technique; resident identification; necessary equipment and materials; potential hydration problems and complications; verbal and nonverbal communication skills; behavioral issues and management techniques; use of disposable gloves; signs of choking; signs and symptoms of aspiration; handwashing; and resident privacy.
- 3) A personal hygiene unit that is at least five hours in length and includes oral hygiene technique, denture care; potential oral hygiene problems and complications; resident identification; verbal and nonverbal communication skills; behavioral issues and management techniques; resident privacy; handwashing; use of disposable gloves; hair combing and brushing; face and handwashing technique; necessary equipment and materials; shaving technique. (Section 3-206.03(d) of the Act)
- k) All training shall also include a unit in safety and resident rights that is at least five hours in length and that includes resident rights; fire safety; use of a fire extinguisher; evacuation procedures; emergency and disaster preparedness; infection control; and use of the call system.
- l) Each resident attendant shall be given instruction by a nurse or dietician concerning the specific feeding, hydration, and/or personal hygiene care needs of the resident whom he or she will be assigned to assist.
- m) Training programs shall be reviewed and approved by the Department every two years. (Section 3-206.03(d) of the Act)
- n) Training programs shall not be implemented prior to initial Department approval.
- o) Application for initial approval of facility-based and non-facility-based training programs shall be in writing and shall include:
- 1) An outline containing the methodology, content, and objectives for the training program. The outline shall address the curriculum requirements set forth in subsection (h) of this Section for each unit included in the program;
  - 2) A schedule for the training program;
  - 3) Resumes describing the education, experience, and qualifications of each program instructor, including a copy of any valid Illinois licenses, as applicable; and
  - 4) A copy or description of the tools that will be used to evaluate competency.
- p) The Department will evaluate the initial application and proposed program for conformance to the program requirements contained in this Section. Based on this review, the Department will:
- 1) Grant approval of the proposed program for a period of two years;



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- 2) Grant approval of the proposed program contingent on the receipt of additional materials, or revision, needed to remedy any minor deficiencies in the application or proposed program, which would not prevent the program from being implemented, such as deficiencies in the number of hours assigned to cover different areas of content, which can be corrected by submitting a revised schedule or outline; or
- 3) Deny approval of the proposed program based on major deficiencies in the application or proposed program that would prevent the program from being implemented, such as deficiencies in the qualifications of instructors or missing areas of content.
- g) Programs shall be resubmitted to the Department for review within 60 days prior to expiration of program approval.
- r) If the Department finds that an approved program does not comply with the requirements of this Section, the Department will notify the facility in writing of non-compliance of the program and the reason for the finding.
- s) If the Department finds that any conditions stated in the written notice of non-compliance issued under subsection (r) of this Section have not been corrected within 30 days after the date of issuance of such notice, the Department will revoke its approval of the program.
- t) Any change in program content or objectives shall be submitted to the Department at least 30 days prior to program delivery. The Department will review the proposed change based on the requirements of this Section and will either approve or disapprove the change. The Department will notify the facility in writing of the approval or disapproval.
- u) A person seeking employment as a resident attendant is subject to the Health Care Worker Background Check Act (Section 3-206.03(f) of the Act) and Section 300.661 of this Part.

(Source: Added at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 300.663 Registry of Certified Nursing Assistants Nurse-Aides

- a) An individual will be placed on the Nurse Aide Registry when he/she has successfully completed a training program approved in accordance with the Long-Term Care Assistants and Aides Training Programs Program Code (77 Ill. Adm. Code 395) and has met background check information required in Section 300.661 of this Part, and when there are no findings of abuse, neglect, or misappropriation of property in accordance with Sections 3-206.01 and 3-206.02 of the Act.
- b) An individual will be placed on the Nurse Aide Registry if he/she has met background check information required in Section 300.661 of this Part and submits documentation supporting one of the following equivalencies:
- 1) Documentation of current registration from another state

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- indicating that the requirements of 42 CFR 483.151 - 483.156 (October 1, 1997, no further amendments or editions included) have been met and that there are no documented findings of abuse, neglect, or misappropriation of property.
- 2) Documentation of successful completion of a nursing arts course (e.g., Basics in Nursing, Fundamentals of Nursing, Nursing 101) with at least 40 hours of supervised clinical experience in an accredited nurse training program as evidenced by a diploma, certificate or other written verification from the school and, within 120 days after employment, successful completion of the written portion of the Department established nursing assistant competency test.
- 3) Documentation of successful completion of a United States military training program that includes the content of the Basic Nursing Assistant Training Program (see 77 Ill. Adm. Code 395) and at least 40 hours of supervised clinical experience, as evidenced by a diploma, certification, DD-214, or other written verification, and, within 120 days after employment, successful completion of the written portion of the Department established nursing assistant competency test.
- 4) Documentation of completion of a nursing program in a foreign country, including the following, and, within 120 days after employment, successful completion of the written portion of the Department-established nursing assistant competency test:
- A) A copy of the license, diploma, registration or other proof of completion of the program;
- B) Proof of application to the Department of Professional Regulation for licensure in Illinois;
- C) A copy of the Social Security card; and
- D) Visa or proof of citizenship.
- c) An individual shall notify the Nurse Aide Registry of any change of address within 30 days and of any name change within 30 days and shall submit proof of any name change to the Department. (Section 3-206.01 of the Act)

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART G: RESIDENT CARE SERVICES

## Section 300.1410 Activity Program

- a) The facility shall provide an ongoing program of activities to meet the interests and preferences and the physical, mental and psychosocial well-being of each resident, in accordance with the resident's comprehensive assessment. The activities shall be coordinated with other services and programs to make use of both community and facility resources and to benefit the residents. ~~There~~



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shall be a specific-planned-program-of-group-and-individual-activities designed-to-encourage-restoration-to-self-care-and-maintenance-of normal-activity-which-is-g geared-to-the-individual-residents-needs. Activities-shall-be-available-daily-and-for-a-reasonable-amount-of time-Residents-shall-be-given-an-opportunity-to-contribute-to planning-preparation-conducting-cleanup-and-critique-of-the program--(B)

b) Activity personnel shall be provided to meet the needs of the residents and the program. Activity staff time each week shall total not less than 45 minutes multiplied by the number of residents in the facility. This time shall be spent in providing activity programming as-described-in-subsection-(e)-of-this-Section as well as the planning and directing of the program. The time spent in the performance of other duties not related to the activity program shall not be counted as part of the required activity staff time. (in-a-facility-whose residents-participate-in-regularly-scheduled-therapeutic-programs outside-the-facility-such-as-school-employment-or-sheltered workshop-the-minimum-hours-per-week-of-activity-staff-time-may-be reduced--the-reduction-shall-be-calculated-by-multiplying-the-number of-residents-in-the-facility-who-participate-in-such-programs-by--the percentage-of-the-day-these-residents-spend-in-such-programs)-

1) In a facility whose residents participate in regularly scheduled therapeutic programs outside the facility, such as school, employment or sheltered workshop, the minimum hours per week of activity staff time may be reduced. The reduction shall be calculated by multiplying the number of residents in the facility who participate in such programs by the percentage of the day that these residents spend in such programs.

2) Activity personnel working under the direction of the activity director shall have a minimum of 10 hours of in-service training per calendar or employment year, directly related to recreation/activities. In-service training may be provided by qualified facility staff and/or consultants, or may be obtained from college or university courses, seminars and/or workshops, educational offerings through professional organizations, similar educational offerings or any combination thereof.

c) Activity Director and Consultation

1) There-shall-be A trained staff person shall be designated as activity director and shall be responsible for planning and directing the activities program. This person shall be regularly scheduled to be on duty in the facility at least four days per week.

2) If the activity director this-person is not a Certified Therapeutic Recreation Specialist (CTRS), Occupational Therapist Registered and Licensed (OTR/L), or a Licensed Social Worker (LSW) or Licensed Clinical Social Worker (LCSW) who has Registered-Occupational-Therapist--a-Therapeutic--Recreation Specialist--or-a-Certified-Social-Worker-with-specialized-course

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work coursework in social group work, the facility shall have a written agreement with a person from one of those disciplines disciplines to provide consultation to the activity director and/or activity department Activity-Director at least monthly, in order to ensure make-sure that the activity programming meets the needs of the residents of the facility.

3) Any person designated as activity director Activity-Director-who is-responsible-for-planning-and-directing-the-activities-program hired after December 24, 1987, shall have a high school diploma or equivalent.

4) Except for individuals qualified as a CTRS, OTR/L, LSW or LCSW as listed in subsection (c)(2) of this Section, any person hired as an activity director after November 1, 2000 shall have taken a 36-hour basic orientation course or shall register to take a 36-hour basic orientation course within 90 days after employment and shall complete the course within 180 days after employment.

This course shall be recognized by an accredited college or university or a nationally recognized continuing education sponsor following the guidelines of the International Association for Continuing Education and Training and shall include at least the following: resident rights; activity care planning for quality of life, human wellness and self-esteem; etiology and symptomatology of persons who are aged, developmentally disabled or mentally ill; therapeutic approaches; philosophy and design of activity programs; activity program resources; program evaluation; practitioner behavior and ethics; resident assessment and supportive documentation; standards and regulations concerning activity programs; management and administration. Individuals who have previously taken a 36-hour basic orientation course, a 42-hour basic activity course or a 90-hour basic education course shall be considered to have met this requirement.

5) 4) The activity director shall have a minimum of ten hours of continuing education per year pertaining to activities programming.

5) Consultation-will-be-required-only-every-six-months-when-the activity-director-meets-or-exceeds-the-criteria-in-Appendix B--Criteria-for-Activity-Directors-Who-Need-Only-Minimal Consultation--(See-Section-300-030)-for-consultant-services-when required-)

6) Consultation shall be required only quarterly when the activity director meets or exceeds the following criteria:

A) High school diploma or equivalent, five years of full-time or 10,000 hours of part-time experience in activities (three years of that experience as an activity director), and completion of a basic orientation course of at least 36 hours; or

B) A two-year associate's degree, three years of experience as

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an activity director, and completion of a basic orientation course of at least 36 hours; or

C) A four-year degree, one year of full-time experience as an activity director, and completion of a basic orientation course of at least 36 hours.

d) Written ~~where-shall-be-written~~ permission, with any contraindications stated, shall be given by the resident's physician if for the resident participates to-participate in the activity program. Standing orders will be acceptable with individual contraindications noted. ~~(B)~~

e) Activity program staff shall participate in the comprehensive assessment of each resident, which shall include the following:

- 1) Background information, including education level, cultural/social issues, and spiritual needs;
- 2) Current functional status, including communication status, physical functioning, cognitive abilities, and behavioral issues; and

3) Leisure functioning, including attitude toward leisure, awareness of leisure resources, knowledge of activity skills, and social interaction skills and activity interests, both current and past.

f) The activity staff shall participate in the development of an individualized plan of care addressing needs and interests of the residents, including activity/recreational goals and/or interventions.

g) The facility shall provide a specific, planned program of individual (including self-initiated) and group activities that are aimed at improving, maintaining, or minimizing decline in the resident's functional status, and at promoting well-being. The program shall be designed in accordance with the individual resident's needs, based on past and present lifestyle, cultural/ethnic background, interests, capabilities, and tolerance. Activities shall be daily and shall reflect the schedules, choices, and rights of the residents (e.g., morning, afternoon, evenings and weekends). The residents shall be given opportunities to contribute to planning, preparing, conducting, concluding and evaluating the activity program.

h) The activity program shall be multifaceted and shall reflect each individual resident's needs and be adapted to the resident's capabilities. The activity program philosophy shall encompass programs that provide stimulation or solace; promote physical, cognitive and/or emotional health; enhance, to the extent practicable, each resident's physical and mental status; and promote each resident's self-respect by providing, for example, activities that support self-expression and choice. Specific types of activities may include:

- 1) Physical activity (e.g., exercise, fitness, adapted sports);
- 2) Cognitive stimulation/intellectual/educational activity (e.g., discussion groups, reminiscence, guest speakers, films, trivia, quizzes, table games, puzzles, writing, spelling, newsletter);
- 3) Spiritual/religious activity (e.g., religious services, spiritual study groups, visits from spiritual support groups);

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- 4) Service activity (e.g., volunteer work for the facility, other individuals and/or the community);
- 5) Sensory stimulation (e.g., tactile, olfactory, auditory, visual and gustatory);
- 6) Community involvement (e.g., community groups coming into the facility for intergenerational programs, special entertainment and volunteer visits; excursions outside the facility to museums, sporting events, entertainment, parks);
- 7) Expressive and creative arts/crafts (adapted to the resident's capabilities), music, movement/dance, horticulture, pet-facilitated therapy, drama, literary programs, art, cooking;
- 8) Family involvement (e.g., correspondence, family parties, holiday celebrations, family volunteers; and
- 9) Social activity (e.g., parties and seasonal activities).

i) If residents participate in regularly scheduled therapeutic programs outside the facility (e.g., school, employment, or sheltered workshop), the residents' needs for activities while they are in the facility shall be met.

j) Residents' participation in and response to the activity program shall be documented at least quarterly and included in the clinical record. The facility shall maintain current records of resident participation in the activity program.

k) The activity program should include at a minimum the following program areas:

- 1) Recreational activities (examples: games, both quiet and active; parties; outside entertainment);
- 2) Crafts (applicable for both men and women);
- 3) Religious activities (examples: Bible study or discussion; Bible quizzes and games; hymn singing; and grace at meals). These are in addition to routine religious services;
- 4) Service activities for community and facility (examples: assist with community fund drives; projects for orphanages; care of one's own area in the facility; and helping to fold linen);
- 5) Intellectual and educational activities (examples: classes in writing, arithmetic, grooming, and social graces; planned group discussion; and word games; resident newsletter);
- 6) Community activities (examples: residents' participation in community activities such as plays, church events, band concerts, and tours);

7) A planned volunteer or auxiliary program that assists with the activities program shall be encouraged; it shall be under the direction of a staff member in a supervisory capacity.

8) Documentation of resident's response to program shall be part of the resident's record as set forth in Section 300-1010(c).

(Source: Amended at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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## Section 300.1440 Volunteer Program

- a) If the facility has a volunteer or auxiliary program, a facility staff person shall direct the program. Community groups such as Boy and Girl Scouts, church groups and civic organizations that may occasionally present programs, activities, or entertainment in the facility shall not be considered volunteers for the purposes of this Section.
- b) Volunteers shall complete a standard orientation program, in accordance with their facility responsibilities and with the facility's policies and procedures governing the volunteer program. The orientation shall include, but not be limited to:
- 1) Residents' rights;
  - 2) Confidentiality;
  - 3) Disaster preparedness (i.e., fire, tornado);
  - 4) Emergency response procedures;
  - 5) Safety procedures/precautions;
  - 6) Infection control; and
  - 7) Body mechanics.
- c) Volunteers shall respect all aspects of confidentiality.
- d) Volunteers shall be informed of and shall implement medical and physical precautions related to the residents with whom they work.
- e) Volunteers shall not take the place of qualified staff (e.g., activity professionals, nursing assistants, or case workers).

(Source: Added at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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## Section 300.APPENDIX E Criteria for Activity Directors Who Need Only Minimal Consultation (Repealed)

	Education	Total-Experience in-Activities	Experience-as Activity-Director	Basic Training
1- High-School diploma-or equivalent		6-years	3-years	Completion-of-a-basic orientation-course-of at-least-36-hrs.
2- 2-year associate degree		4-years	3-years	Completion-of-a-basic orientation-course-of at-least-36-hrs.
3- Therapeutic Recreation Assistant-or Certified Occupational Therapy-Assistant		2-years	2-years	Completion-of-a-basic orientation-course-of at-least-36-hrs.
4- 4-year-degree		2-years	2-years	Completion-of-a-basic orientation-course-of at-least-36-hrs.
The--basic--orientation--course--for-activity-shall-include-material-related-to life-span-changes--resident--rights--etiology--and--symptomatology--of--aged, developmentally--disabled, and-mentally-ill-residents--therapeutic-approaches, communication--philosophy-and-design-of--activity--programs--activity-program resources--standards--and--regulations--documentation--and--management--and administration.				

(Source: Repealed at 24 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)



## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF EMERGENCY RULES

1) Heading of the Part: Eliminate the Digital Divide Program

2) Code Citation: 14 Ill. Adm. Code 546

<u>Section Numbers:</u>	<u>Emergency Action:</u>
546.10	New Section
546.20	New Section
546.30	New Section
546.110	New Section
546.120	New Section
546.130	New Section
546.140	New Section
546.150	New Section
546.160	New Section
546.170	New Section
546.180	New Section
546.190	New Section

4) Statutory Authority: Implementing and authorized by the Eliminate the Digital Divide Law [30 ILCS 780], Article 5 of the FY 2001 Budget Implementation Act (see Public Act 91-704).

5) Effective Date of Rules: November 6, 2000

6) If these emergency rules are to expire before the end of the 150-day period, please specify the date on which it is to expire: N/A

7) Date filed in Agency's Principal Office: November 6, 2000

8) Reason for Emergency: The Eliminate the Digital Divide Law was enacted as part of Public Act 91-740, the FY 2001 Budget Implementation Act. This Law became effective July 1, 2000. The Department of Commerce and Community Affairs (DCCA) received a related \$1.0 million GRF appropriation for FY 2001. The Department is to make grants in support of Community Technology Centers (CTCs), pursuant to the requirements of this Law. Planning for implementation of this program began immediately after passage. However, activities under this grant program had to be coordinated with activities under related State and federal programs, complicating the policy development and planning tasks.

The law contains the following provision: *Grant applications shall be submitted to the Department not later than March 15 for the next fiscal year.* The DCCA is now prepared to proceed with promulgation of rules. The Department is also ready to issue a competitive request for proposal (RFP) to initiate the grant making process. Given the time needed to: (1) issue a RFP, (2) allow time for response, (3) conduct the review of applications, and (4) negotiate grant agreements, emergency rules are needed at this time. In order to meet the statutory deadline and to avoid

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF EMERGENCY RULES

potentially lapsing the FY 2001 appropriation, the Department needs to issue rules on an emergency basis. Concurrent issuance of emergency and proposed rules will authorize the release of the RFP and begin the process of making grants while the rules process proceeds.

9) A Complete Description of the Subjects and Issues Involved: The use of automatic data processing applications is becoming ubiquitous throughout industries and occupations. Those who have a mastery of computer related skills have a distinct advantage in the labor market over those who have had little or no opportunity to learn these skills. Unequal access to computers and telecommunications technology threatens to widen existing economic divisions in society. This disparity of access to new computer related technologies and job opportunities is what has been termed the "digital divide".

The goal of the Illinois Eliminate the Digital Divide Law is to increase access to computers and telecommunications technology (e.g., the Internet) to residents of low income communities. The program subsidizes the operation of Community Technology Centers located in communities where 50 percent or more of the students are eligible for the federal school lunch program. State educational agencies, local educational agencies, institutions of higher education, and other public and private nonprofit or for-profit agencies and organizations are eligible to receive grants under this program.

Community Technology Centers provide computer access and educational services using information technology. Centers are diverse in the populations they serve and programs they offer, but are similar in that they provide technology access to individuals, communities, and populations that typically would not otherwise have places to use computer and telecommunications technologies.

The proposed rule provides policies and procedural guidance for the administration of the Eliminate the Digital Divide Program. Specifically the proposed rule describes the purpose of the program, eligible communities and applicants, authorized activities, allowable costs, limitations, application, and review procedures, and reporting requirements.

10) Are there any proposed rules pending on this part? No

11) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805].

12) Information and questions regarding these rules shall be directed to:

Ms. Raya Bogard

DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

NOTICE OF EMERGENCY RULES

Administrative Code Rules Manager  
Illinois Department of Commerce and Community Affairs  
100 West Randolph Street, Suite 3-400  
Chicago, Illinois 60601  
(312) 814-9593

The full text of the emergency rules begins on the next page:

DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

NOTICE OF EMERGENCY RULES

TITLE 14: COMMERCE  
CHAPTER I: DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS  
PART 546  
ELIMINATE THE DIGITAL DIVIDE PROGRAM

SUBPART A: ADMINISTRATIVE REQUIREMENTS

Section  
546.10 General Purposes  
EMERGENCY  
546.20 Definitions  
EMERGENCY  
546.30 Legal Requirements  
EMERGENCY

SUBPART B: COMMUNITY TECHNOLOGY CENTER GRANT PROGRAM

Section  
546.110 Purpose  
EMERGENCY  
546.120 Determination of Eligible Communities  
EMERGENCY  
546.130 Eligible Applicants  
EMERGENCY  
546.140 Authorized Activities  
EMERGENCY  
546.150 Allowable Costs  
EMERGENCY  
546.160 Proposal Content  
EMERGENCY  
546.170 Review Criteria and Negotiation Procedures  
EMERGENCY  
546.180 Limitations  
EMERGENCY  
546.190 Reporting  
EMERGENCY

AUTHORITY: Implementing Section 5-30 and authorized by Section 5-105 of the FY 2000 Budget Implementation Act [30 ILCS 780] (see Public Act 91-704).

SOURCE: Adopted by emergency rulemaking at 24 Ill. Reg. effective November 6, 2000, for a maximum of 150 days.

SUBPART A: ADMINISTRATIVE REQUIREMENTS

Section 546.10 General Purposes  
EMERGENCY

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF EMERGENCY RULES

The purpose of the Eliminate the Digital Divide Program is to expand access to information technology and educational opportunities through Community Technology Centers (CTC) located in low income communities. Grants may be awarded to plan, establish, administer and expand such CTCs.

**Section 546.20 Definitions  
EMERGENCY**

"Act" means Article 5 of the FY 2000 Budget Implementation Act, also cited as the Eliminate the Digital Divide Law.

The following words or phrases, for the purpose of this rule, have the same meaning respectively ascribed to them in Section 5-5 of the Act:

"Community-based organization" means a private not-for-profit organization that is located in an Illinois community and that provides services to citizens within that community and surrounding area.

"Community Technology Centers" provide computer access and educational services using information technology. Community technology centers are diverse in the populations they serve and programs they offer, but similar in that they provide technology access to individuals, communities, and use computer and telecommunication technologies.

"Department" means the Department of Commerce and Community Affairs.

"National School Lunch Program" means a program administered by the U.S. Department of Agriculture and state agencies that provides free or reduced price lunches to economically disadvantaged children. A child whose family income is between 130% and 185% of applicable family size income levels contained in the nonfarm poverty guidelines prescribed by the Office of Management and Budget is eligible for a reduced price lunch. A child whose family income is 130% or less of the applicable family size income levels contained in the non-farm poverty guidelines prescribed by the Office of Management and Budget is eligible for a free lunch.

"Telecommunications services" provided by telecommunications carriers include all commercially available telecommunication services in addition to all reasonable charges that are included by taking such services, such as state and federal taxes.

"Other special services" provided by telecommunications carriers include Internet access and installation and maintenance of internal connections in addition to all reasonable charges that are incurred by taking such services, such as state and federal taxes.

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF EMERGENCY RULES

**Section 546.30 Legal Requirements  
EMERGENCY**

Any entity awarded a Community Technology Center Grant shall be required to execute a grant agreement that sets forth the rights and responsibilities of the grantee and the Department. The Grant Agreement shall reflect all applicable state and federal statutory and administrative requirements, including but not limited to provisions covering expenditure of grant funds and utilization of property purchased with grant funds.

## SUBPART B: COMMUNITY TECHNOLOGY CENTER GRANT PROGRAM

**Section 546.110 Purpose  
EMERGENCY**

Subject to appropriation, the Department shall make grants to plan, establish, administer, and expand Community Technology Centers. The purposes of such grants shall include, but shall not be limited to, underwriting expenses relating to volunteer recruitment and management, infrastructure, and related goods and services for Community Technology Centers. (Section 5-30(a) of the Act)

**Section 546.120 Determination of Eligible Communities  
EMERGENCY**

To be eligible to apply for a grant, a Community Technology Center must serve a community in which not less than 50% of the students are eligible for a free or reduced price lunch under the national school lunch program or in which not less than 40% of the students are eligible for a free lunch under the national school lunch program;

- a) The Department shall annually obtain a list of school districts meeting these criteria from the Illinois State Board of Education (ISBE). The Department shall supplement this administrative data from ISBE with public use quality poverty data from the U.S. Department of Commerce, Bureau of the Census. Poverty data and the administrative data from the ISBE will be used to determine eligible communities.
- b) If funding is insufficient to approve all grant applications for a particular fiscal year, the Department may impose a higher minimum percentage threshold for that fiscal year (Section 5-30(b) of the Act). The Department shall make such a determination after applications are received and the need is determined, as evidenced by the total amount of funding requested.

**Section 546.130 Eligible Applicants  
EMERGENCY**

The following entities are eligible applicants for grants under the Community Technology Center Grant Program:



## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF EMERGENCY RULES

- a) State educational agencies,
- b) Local educational agencies,
- c) institutions of higher education,
- d) other public and private nonprofit or for-profit agencies and organizations are eligible to receive grants under this Program,
- e) a group of eligible entities is also eligible to receive a grant if the group follows the procedures for group applications in 34 CFR 75.127-129 of the Education Department General Administrative Regulations, and
- f) any entities that have received a Community Technology Center grant under the federal Community Technology Centers. (Section 5-30(b) of the Act) The grant recipient shall assure that the services of the Community Technology Center are accessible to the general public and shall not restrict access on the basis of age, race, gender, minority status, religion, disability, or national origin.

**Section 546.140 Authorized Activities****EMERGENCY**

In general, authorized activities shall include, but not be limited to, volunteer recruitment and management, infrastructure, and related goods and services for Community Technology Centers (Section 5-30(a) of the Act). CTCs typically provide a variety of services and programs such as:

- a) Training to familiarize youth and adults with basic skills needed to access and utilize computers, common computer applications programs (e.g., word processing) and the Internet;
- b) vocational skills training relating to information technology occupations;
- c) access to career related information, employment opportunities, and related search capabilities available through the Internet;
- d) computerized instruction in:
  - 1) basic literacy skill;
  - 2) GED preparation; and,
  - 3) English as a second language instruction;
- e) before and after school programs for youth for academic enrichment and reinforcement;
- f) computer skills training and support for entrepreneurs and small businesses;
- g) distance learning and video conferencing;
- h) access to assistive technology for disabled populations;
- i) professional development for teachers; and,
- j) promotion of home access to computers.

**Section 546.150 Allowable Costs****EMERGENCY**

Allowable costs shall include reasonable and necessary expenses associated with the planning and operation of a Community Technology Center, as agreed to by

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF EMERGENCY RULES

the Department and as specified in an agreement between the Department and the grant recipient. Such costs may include reimbursement for expenses for:

- a) personal services;
- b) fringe benefits;
- c) travel;
- d) equipment;
- e) supplies;
- f) rent/facilities costs;
- g) contractual services; and,
- h) other costs, which are consistent with statute, agreed upon by the Department, and as specified in an agreement between the Department and the grant recipient.

**Section 546.160 Proposal Content****EMERGENCY**

Subject to appropriations, the Department shall issue instructions and formats to eligible applicants for the submittal of grant proposals in advance of each funding cycle. The proposal shall contain sufficient information to clearly explain the nature and potential benefits of the proposed project. The proposal will generally include the following sections:

- a) an executive summary;
- b) a description of the applicant demonstrating that the CTC is located within an eligible community, as required by Section 546.120 of this rule and that the applicant is eligible to apply for a grant pursuant to the requirements of Section 546.130 of this rule;
- c) a description of the Community Technology Center (or proposed center) including:
  - 1) a description of the organization and location of the CTC;
  - 2) a description of the services typically provided;
  - 3) a description of the technological infrastructure already in place;
  - 4) a description of the populations typically served;
  - 5) a description of actual related performance of the CTC, as compared to outcome objectives specified in past state or federal grants for related purposes; and,
- d) a description of the level of community support for the CTC;
  - a) a description of the technology-related needs of the targeted community including:
    - 1) a description of what the needs are;
    - 2) a description of how needs were determined, including methods used to collect community input; and,
    - 3) a description of existing community resources addressing those needs;
  - e) a description of the activities proposed by the CTC to be undertaken during the period of performance of the grant to address the needs;
  - f) a schedule for the implementation of proposed activities;
  - g) measurable outcome objectives to be achieved during the period of

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

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- performance for the grant;
- h) a budget requesting grant funds for allowable costs and a justification for all costs requested;
  - i) a description of the education and related experience of key project personnel; and,
  - j) a description of the CTC participation in related programs.

#### Section 546.170 Review Criteria and Negotiation Procedures EMERGENCY

Grant proposals shall be reviewed on a competitive basis. Based on the competitive review, applicants shall be selected to enter into negotiations with the Department for a grant. The purpose of negotiations shall be to arrive at mutually acceptable grant provisions, including general, budgetary, and scope-of-work provisions. The final decision to make a grant award will be made by the Director of the Department. The Department shall use the following criteria when reviewing grant proposals and making awards:

- a) Need of the Eligible Community: In determining relative need, the Department shall consider the following factors:
  - 1) economic need in each target community, as evidenced by the proportion of local youth eligible for reduced cost, or free, lunches under the National School Lunch Program; and
  - 2) the level of access to technology of the populations to be served by the community technology center.
- b) Quality of the Proposal: The Department shall examine the overall quality of the activities and programs provided by the CTC. In making this judgment the Department shall consider:
  - 1) the range, nature, and volume of activities to be undertaken, or proposed to be undertaken, by the Community Technology Center;
  - 2) the measurable performance outcomes proposed by the applicant;
  - 3) the past success of the applicant; and,
  - 4) the qualifications of staff assigned to deliver project activities.
- c) Community Support for the CTC: The Department shall consider overall level of community support for the CTC. In making this judgment the Department shall consider:
  - 1) the amount of local community input received by the applicant in the design and operation of the Community Technology Center; and,
  - 2) the level of financial support received by the applicant from private/non-governmental sources.
- d) Cost: The Department shall examine the reasonableness of costs relative to the type of expenses being proposed.
- e) Geographic Distribution of Awards: Along with the other criteria listed in this section, the Director of the Department shall consider the geographic distribution of awards throughout the State when making final decisions regarding grant awards.

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF EMERGENCY RULES

#### Section 546.180 Limitations EMERGENCY

Grants are subject to the following limitations:

- a) The total amount of grants under the Community Technology Center Grant Program in fiscal year 2001 shall not exceed \$2,000,000. (Section 5-30(a) of the Act)
- b) No Community Technology Center may receive a grant of more than \$50,000 under this program in a particular fiscal year (Section 5-30(a) of the Act)

#### Section 546.190 Reporting EMERGENCY

Unless otherwise specified in the agreement between the Department and the recipient, an entity receiving a grant shall report financial and programmatic data to the Department on a regular basis using formats provided by the Department. The Department shall require quarterly reporting of expenditures and program achievements at a level of detail sufficient to provide for program accountability.

- a) Expenditures: Unless otherwise specified in the agreement with the Department, an entity receiving a grant shall report actual expenditures using expenditure formats supplied by the Department. Expenditure summaries are to be submitted to the Department by the 15th day following the end of each fiscal quarter in which any expenditure of grant funds is made.
- b) Program Report: Unless otherwise specified in the agreement with the Department, an entity receiving a grant shall submit a program report in a format provided by the Department. The program report shall include a narrative describing the entity's progress towards achieving objectives and activities as specified in the agreement with the Department. Program reports shall be submitted to the Department by the 15th day following the end of each fiscal quarter.

## OFFICE OF THE COMPTROLLER

## NOTICE OF EMERGENCY AMENDMENT

- 1) Heading of the Part: Claim Eligible to be Offset
- 2) Code Citation: 74 Ill. Adm. Code 285
- 3) Section Numbers: 285.1104  
Emergency Action:  
Amend
- 4) Statutory Authority: Implementing Section 10.05 and authorized by Section 21 of the State Comptroller's Act [15 ILCS 405/10.05 and 21]. Also implementing Sections 5 of the Illinois State Collection Act of 1986 [30 ILCS 210.5].
- 5) Effective Date of Amendment: November 1, 2000
- 6) If this emergency amendment is to expire before the end of the 150-day period, please specify the date on which it is to expire: The amendment will expire a the end fo the 150-day period.

7) Date Filed with the Index Department: October 27, 2000

8) A copy of the emergency amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Reason for Emergency: Section 10.05 of the State Comptroller's Act [15 ILCS 405/10.05] limits to 25% of the net payment deductions from warrants for wages and salary or for contractual payments to individuals for personal services. Under the current form of the rule adopted to implement Section 10.05, pension payments are not within the scope of the 25% limitation. Section 5 of Article XIII of the Illinois Constitution establishes pension payments to individuals as enforceable contractual rights. The implementing regulations should reflect these rights, addressing pension payments in a manner consistent with contractual payments to individuals for personal services.

The General Assembly has exempted pension payments from all forms of process for debt liquidation and collection, which recognizes that, as a matter of public policy, pensions should be treated differently from other warrants. Each month approximately 50 persons have their pension subject to offset. Without an emergency rule limiting the amount of offset to 25%, as in the case of salary or personal service payments, the quality of life of the persons financially dependent upon pensions may be substantially impaired.

10) A Complete Description of the Subjects and Issues Involved: The rulemaking modifies the current rule to include retirement annuity payments under the Illinois Pension Code [40 ILCS 5] as a category for which the State's offset ability is limited to 25%.

## OFFICE OF THE COMPTROLLER

## NOTICE OF EMERGENCY AMENDMENT

- 11) Are there any proposed amendments to this Part Pending? No
- 12) Statement of Statewide Policy Objectives: This rulemaking neither imposes a State mandate, nor modifies an existing mandate.
- 13) Information and questions regarding this amendment shall be to:

Charles Schmadeke  
General Counsel  
Office of the Comptroller  
201 State Capitol  
Springfield, Illinois 62706  
271/782-6000

The full text of the emergency amendment begins on the next page:



OFFICE OF THE COMPTROLLER  
NOTICE OF EMERGENCY AMENDMENT

TITLE 74: PUBLIC FINANCE  
CHAPTER II: COMPTROLLER

PART 285

CLAIM ELIGIBLE TO BE OFFSET

Section	
285.1100	Foreword
285.1101	Definitions
285.1102	Request for Processing a Claim Under Section 10.05 of the Act
285.1103	Warrants Subject to Deduction
285.1104	Processing a Claim Under Section 10.05
<u>EMERGENCY</u>	
285.1105	Wage Deductions
285.1106	Ascertaining the Amount Due and Payable to the State
285.1107	Notification of the Comptroller's Exercise of Section 10.05
285.1108	Record Retention
285.1109	Accounting for Recovery
285.1110	Transition Period

**AUTHORITY:** Implementing Section 10.05 and authorized by Section 21 of the State Comptroller Act [15 ILCS 405/10.05 and 21]. Also implementing Section 5 of the Illinois State Collection Act of 1986 [30 ILCS 210/5].

**SOURCE:** Adopted at 5 Ill. Reg. 423, effective December 30, 1980; codified at 5 Ill. Reg. 10598; amended at 8 Ill. Reg. 2451, effective February 9, 1984; amended at 10 Ill. Reg. 10538, effective June 3, 1986; amended at 11 Ill. Reg. 11996, effective July 7, 1987; amended at 11 Ill. Reg. 18630, effective October 29, 1987; amended at 15 Ill. Reg. 5070, effective March 21, 1991; amended at 19 Ill. Reg. 227, effective December 30, 1994; emergency amendment at 24 Ill. Reg. 1111, effective November 1, 2000, for a maximum of 150 days.

**Section 285.1104 Processing a Claim Under Section 10.05**  
EMERGENCY

The following provisions shall govern the processing of a claim under Section 10.05 of the Act:

- a) Before making an offset, the Comptroller shall review the information provided by the agency notifying the Comptroller of a claim and shall ascertain therefrom the amount due and payable.
- b) The Comptroller shall charge the agency which submits a voucher, against which voucher an offset claim is applied, for the full amount of the voucher submitted. The Comptroller shall draw a warrant on the treasury or on other funds held by the State Treasurer in the amount of the claim eligible to be offset and deposit that warrant into the State Offset Claims Fund. The State Offset Claims Fund shall be a trust fund established and administered by the Comptroller for the deposit of monies deducted from a person's warrant pursuant to an

offset and the subsequent payment of monies back to either the State agency requesting the offset or the original payee. If after thirty days have elapsed from the date the Comptroller gives notice of the offset as prescribed in Section 285.1106(a), no protest is made by the person subject to the offset, the Comptroller shall issue a warrant on the State Offset Claims Fund for the amount of that deposit to the agency entitled thereto. If a protest which conforms to the requirements of Section 285.1106(b) is made, the Comptroller shall not issue such warrant to the State agency on the State Offset Claims Fund until the Comptroller ascertains the amount due and payable as provided in Section 285.1106(c).

- c) If the Comptroller receives a proper request for a claim after he has drawn a warrant(s), the Comptroller shall, where feasible, reprocess the warrant in order that the offset may be taken, as provided for in this Section.
- d) If the amount of the claim eligible to be offset is less than the amount to which the person is entitled, the Comptroller shall draw a warrant for the balance of the amount of the voucher against which the Comptroller has made the offset and shall issue that warrant to the person subject to the offset.
- e) In cases where offsets are to be made against an employee's wages, no more than 25% of the employee's disposable earnings may be subject to offset. Final compensation payments paid to a person when the person leaves the employ of a State agency for accrued vacation, sick leave or overtime are exempt from the 25% limitation. State agencies may submit claims for offset for the entire amount owed to the State agency and the Comptroller's Offset System will compute the required 25% available for offset. In the event that the calculation of 25% of the employee's disposable earnings exceeds the net amount of the warrant (i.e., the employee's take-home pay), that employee's payroll voucher will be returned to the submitting agency. A payroll reversal will be processed and the employee's voluntary deductions must be cancelled or reduced so that the employee's take-home pay will be sufficient to satisfy the amount calculated as available for offset. Agencies should contact their employees to determine which of the voluntary deductions are to be cancelled or reduced.
- f) The limitations set forth in subsection (e) above apply to:
  - 1) wage or salary payments; and
  - 2) regular and continuing contractual payments made to an individual for personal services paid on a contractual payroll; and-
  - 3) pension annuity payments under the Illinois Pension Code [40 ILCS 5/].

(Source: Amended by emergency rulemaking at 24 Ill. Reg. effective November 1, 2000, for a maximum of 150 days)

DEPARTMENT OF PUBLIC AID  
AGENCY RESPONSE TO JOINT COMMITTEE  
RECOMMENDATION ON PROPOSED RULEMAKING

1) Heading of the Part: Medicaid Community Mental Health Services Program  
(Rulemaking by the Department of Human Services)

2) Code Citation: 59 Ill. Adm. Code 132

Section Number:	Proposed Action:
132.25	Amendment
132.42	Amendment
132.55	Amendment
132.80	Amendment
132.100	Amendment
132.150	Amendment
132.155	Amendment

4) Notice of Proposed Amendments Published in the Illinois Register: May 5, 2000 (24 Ill. Reg. 6768)

5) JCAR Statement of Recommendation on Proposed Rulemaking Published in the Illinois Register: November 13, 2000 (24 Ill. Reg. 16853)

6) Summary of Action Taken by the Agency: At its meeting on October 17, 2000, the Joint Committee on Administrative Rules issued a recommendation that "the Department of Public Aid codify into rules the procedures used by its Office of the Inspector General to investigate Medicaid fraud, including but not limited to time frames for investigations, investigative process and procedure, appeal procedures, contact information for providing evidence of Medicaid fraud, etc."

The Joint Committee issued the recommendation in response to its recent review of amendments to rules of the Department of Human Services (DHS) on the Medicaid Community Mental Health Services Program at 59 Ill. Adm. Code 132, which were published on May 5, 2000, at 24 Ill. Reg. 6768. The Departments of Public Aid and Human Services have interagency agreements describing their respective responsibilities in these areas.

The Office of Inspector General (OIG) and the Department believe that DHS understands the reporting process for cases involving potential fraud and abuse. However, it is a good idea to ensure these requirements are clear. Consequently, the Department will commit to placing language concerning the reporting process along with the title, address and telephone number for such contacts into current and future interagency agreements with DHS that are relevant to this topic.

As to the other recommendations, the OIG does not investigate Medicaid provider fraud. By its nature, fraud is criminal. Criminal investigations of Medicaid provider fraud are the responsibility of the Medicaid Fraud Control Unit (MFCU), an entity within the Illinois State Police. By

ILLINOIS RACING BOARD  
NOTICE OF WITHDRAWAL OF PROPOSED AMENDMENTS

1) Heading of the Part: Racing Bingo

2) Code Citation: 11 Ill. Adm. Code 318

Section Numbers	Proposed Action:
318.10	New Section
318.20	New Section
318.30	New Section
318.40	New Section
318.50	New Section
318.60	New Section
318.70	New Section
318.80	New Section
318.90	New Section
318.100	New Section

4) Date Notice of Proposed Amendments Published in the Illinois Register: 25 Ill. Reg. 15010, October 13, 2000.

5) Reason for the Withdrawal: This proposed rule was withdrawn at the request of the sponsor.

## DEPARTMENT OF PUBLIC AID

AGENCY RESPONSE TO JOINT COMMITTEE  
RECOMMENDATION ON PROPOSED RULEMAKING

federal regulations at 42 CFR 455.21, the single state Medicaid agency is required to report all potential provider fraud to the MFCU, which has the responsibility to conduct criminal investigations. Requirements at 305 ILCS 5/12-13.1 set forth the responsibilities of the Inspector General, among which is the duty to serve as liaison between the Department of Public Aid and criminal justice agencies. The OIG serves as the primary contact for the MFCU and works closely with it on potential fraud cases.

The OIG and the Department feel it would be inappropriate to codify into rules the time frames, procedures, process and appeal information for a responsibility that is not its own. In addition, investigative work is fluid and dynamic. Codifying time frames and procedures serves to impede effective investigations. There are also some investigative activities and procedures that are confidential and not subject to public disclosure. Delineating procedures and mandating time frames has the potential to limit the government's ability to combat fraud and abuse in public programs. Further, there are no appeals of investigations in and of themselves. Individuals and providers have due process and appeal rights to sanctions that ensue from investigations, be those sanctions criminal, civil or administrative. Those rights are already set forth in State and federal statute and regulations.

With the expansion of information on reporting processes placed in the interagency agreements, the Department believes that additional rulemaking concerning the Department's administrative role in Medicaid fraud proceedings is unwarranted.

JOINT COMMITTEE ON ADMINISTRATIVE RULES  
ILLINOIS GENERAL ASSEMBLY

## SECOND NOTICES RECEIVED

The following second notices were received by the Joint Committee on Administrative Rules during the period of October 31, 2000 through November 6, 2000 and have been scheduled for review by the Committee at its November 14, 2000 meeting in Springfield or its December 12, 2000 meeting in Chicago. Other items not contained in this published list may also be considered. Members of the public wishing to express their views with respect to a rulemaking should submit written comments to the Committee at the following address: Joint Committee on Administrative Rules, 700 Stratton Bldg., Springfield IL 62706.

Second Notice Expires	Agency and Rule	Start Of First Notice	JCAR Meeting
11/18/00	Illinois Community College Board, Administration of the Illinois Public Community College Act (23 Ill Adm Code 1501)	11/19/99 23 Ill Reg 13713	11/14/00
12/14/00	Department of Insurance, Minimum Standards for Individual and Group Medicare Supplement Insurance (50 Ill Adm Code 2008)	7/21/00 24 Ill Reg 10576	12/12/00
12/16/00	Department of Revenue, Payment of Taxes by Electronic Funds Transfer (86 Ill Adm Code 750)	9/8/00 24 Ill Reg 13611	12/12/00
12/16/00	Department of Employment Security, Determination of Unemployment Contributions (56 Ill Adm Code 2770)	9/15/00 24 Ill Reg 13759	12/12/00
12/16/00	Department of Natural Resources, Disabled Hunting Method Authorizations (17 Ill Adm Code 760)	9/15/00 24 Ill Reg 13814	12/12/00
12/17/00	Department of Revenue, Property Tax Code (86 Ill Adm Code 110)	9/15/00 24 Ill Reg 13850	12/12/00
12/17/00	Pollution Control Board, General Rules (35 Ill Adm Code 101)	3/31/00 24 Ill Reg 5225	12/12/00
12/17/00	Pollution Control Board, General Rules (Repealer) (35 Ill Adm Code 101)	3/31/00 24 Ill Reg 5289	12/12/00



JOINT COMMITTEE ON ADMINISTRATIVE RULES  
ILLINOIS GENERAL ASSEMBLY

## SECOND NOTICES RECEIVED

12/17/00	Pollution Control Board, Regulatory and Informational Hearings and Proceedings (Repealer) (35 Ill Adm Code 102)	3/31/00 24 Ill Reg 5504	12/12/00
12/17/00	Pollution Control Board, Regulatory and Informational Hearings and Proceedings (35 Ill Adm Code 102)	3/31/00 24 Ill Reg 5531	12/12/00
12/17/00	Pollution Control Board, Enforcement Proceedings (35 Ill Adm Code 103)	3/31/00 24 Ill Reg 5182	12/12/00
12/17/00	Pollution Control Board, Enforcement Proceedings (Repealer) (35 Ill Adm Code 103)	3/31/00 24 Ill Reg 5198	12/12/00
12/17/00	Pollution Control Board, Variances (Repealer) (35 Ill Adm Code 104)	3/31/00 24 Ill Reg 5591	12/12/00
12/17/00	Pollution Control Board, Regulatory Relief Mechanisms (35 Ill Adm Code 104)	3/31/00 24 Ill Reg 5563	12/12/00
12/17/00	Pollution Control Board, Appeals of Final Decisions of State Agencies (35 Ill Adm Code 105)	3/31/00 24 Ill Reg 5473	12/12/00
12/17/00	Pollution Control Board, Permits (Repealer) (35 Ill Adm Code 105)	3/31/00 24 Ill Reg 5495	12/12/00
12/17/00	Pollution Control Board, Proceedings Pursuant to Specific Rules or Statutory Provisions (35 Ill Adm Code 106)	3/31/00 24 Ill Reg 5377	12/12/00
12/17/00	Pollution Control Board, Hearings Pursuant to Specific Rules (Repealer) (35 Ill Adm Code 106)	3/31/00 24 Ill Reg 5326	12/12/00
12/17/00	Pollution Control Board, Petition to Review Pollution Control Facility Siting Decisions (35 Ill Adm Code 107)	3/31/00 24 Ill Reg 5463	12/12/00
12/17/00	Pollution Control Board, Office of the State Fire Marshal Appeals (Repealer) (35 Ill Adm Code 107)	3/31/00 24 Ill Reg 5442	12/12/00

JOINT COMMITTEE ON ADMINISTRATIVE RULES  
ILLINOIS GENERAL ASSEMBLY

## SECOND NOTICES RECEIVED

12/17/00	Pollution Control Board, Administrative Citations (35 Ill Adm Code 108)	3/31/00 24 Ill Reg 5173	12/12/00
12/17/00	Pollution Control Board, Identification and Protection of Trade Secrets (Repealer) (35 Ill Adm Code 120)	3/31/00 24 Ill Reg 5411	12/12/00
12/17/00	Pollution Control Board, Tax Certifications (35 Ill Adm Code 125)	3/31/00 24 Ill Reg 5555	12/12/00
12/17/00	Pollution Control Board, Identification and Protection of Trade Secrets and Other Non-Disclosable Information (35 Ill Adm Code 130)	3/31/00 24 Ill Reg 5426	12/12/00

## PROCLAMATIONS

2000-560

## PORNOGRAPHY AWARENESS WEEK

WHEREAS, the U.S. Supreme Court has repeatedly ruled that obscenity is not protected speech under the First Amendment; and

WHEREAS, pornography can inflict tremendous suffering and damage to individuals, families, business districts, communities, and our nation; and

WHEREAS, there are state and federal anti-obscenity laws on the books to protect public safety, public morality, and public health; and

WHEREAS, the obscenity laws are uniquely grounded in community standards;

THEREFORE, I, George H. Ryan, Governor of the State of Illinois, proclaim October 29-November 3, 2000, as PORNOGRAPHY AWARENESS WEEK in Illinois.

Issued by the Governor October 26, 2000.

Filed by the Secretary of State November 6, 2000.

2000-561

## ARAB AMERICAN MONTH

WHEREAS, more than 400,000 Illinois residents of Arab descent, both Muslim and Christian faiths, have chosen Illinois as their home and have proudly shared their culture, heritage and talents with our state; and

WHEREAS, citizens of Arab descent have contributed to all walks of life, including government, education, science, culture, business, medicine, and the civic well-being of our nation and of our community; and

WHEREAS, Arab Americans have made many contributions to our society and have included among their ranks such notable Americans as Michael DeBakey, the first heart transplant surgeon; John Sununu, Chief of Staff to President Bush; Senator George Mitchell, former majority leader and chief negotiator for Ireland's Peace Conference; the late Sharon Christa McAuliffe, teacher and American patriot who was among the victims of the Space Shuttle Challenger disaster; Casey Kassem, popular music radio host; Danny Thomas, well-known TV sitcom actor, entertainer, and founder of St. Jude Children's Research Hospital; Kathy Najimy, movie actress; and many other Arab Americans who serve as positive role models in our society; and

WHEREAS, many Arab Americans have served in the Armed Forces of the United States, serving in many wars, including World War II, the Korean War, and the Vietnam War; and

WHEREAS, the State of Illinois is a diverse community composed of many ethnic cultures including the rich Arab American culture; and

WHEREAS, the Governor's Office of Ethnic Affairs is sponsoring an Arab American cultural exhibit at the James R. Thompson Center November 13, 2000, to November 17, 2000;

THEREFORE, I, George H. Ryan, Governor of the State of Illinois, proclaim November 2000 as ARAB AMERICAN MONTH in Illinois.

Issued by the Governor October 31, 2000.

Filed by the Secretary of State November 6, 2000.

2000-562

## THOMAS PAINE DAY

WHEREAS, Thomas Paine was a leader of the American Revolution, one of the Founding Fathers, a peer of Washington, Madison, Franklin and Jefferson, and one of the most brilliant political philosophers of his time; and

WHEREAS, Thomas Paine crystallized the decision of the Colonies for independence with his work, "Common Sense"; and

WHEREAS, Thomas Paine supported the revolution through personal service, his fortune, and his inspirational "Crisis Papers"; and

WHEREAS, Thomas Paine was the first to promote universal and equal education for boys and girls, equality for women, religious freedom, and the first to suggest a League of Nations; and

WHEREAS, his life and work continue to inspire those who seek liberty and democracy all over the world;

THEREFORE, I, George H. Ryan, Governor of the State of Illinois, proclaim January 29, 2001, as THOMAS PAINE DAY in Illinois.

Issued by the Governor October 31, 2000.

Filed by the Secretary of State November 6, 2000.

2000-563

## APPRENTICESHIP AWARENESS MONTH

WHEREAS, apprenticeship training provides this state with highly trained and efficient craft workers; and

WHEREAS, labor, management, the Federal Bureau of Apprenticeship and Training, Illinois Workforce Services, Illinois Labor Commission, Illinois Division of Professional and Occupational Licensing, secondary education, and post-secondary education have joined hands to promote and expand apprenticeship; and

WHEREAS, they have formed the Illinois Apprenticeship Steering Committee to bring together the leaders of various industries and labor and governmental entities who are engaged in administration, teaching, guidance, and the preparation of apprenticeship with the purpose of providing skilled craft workers for Illinois and the nation; and

WHEREAS, it is appropriate for Illinois to recognize this effort on behalf of apprenticeship training and those that are actively seeking a better future through apprenticeship;

THEREFORE, I, George H. Ryan, Governor of the State of Illinois, proclaim October 2000 as APPRENTICESHIP AWARENESS MONTH in Illinois.

Issued by the Governor November 1, 2000.

Filed by the Secretary of State November 6, 2000.

2000-564

## LINCOLN S. TAMRAZ DAY

WHEREAS, Lincoln S. Tamraz was born November 14, 1923, married Grace Mortellaro in 1948, and has been blessed with four children and fifteen grand children; and

WHEREAS, he served in the United States Army, but due to head and back injuries during special training for Officers Candidate School, he was honorably discharged in February 1946; and

WHEREAS, Lincoln Tamraz joined the AMVETS, where he is a 54-year Charter Life Member, serving in several appointive and elective offices, including Cook County Commander, State Commander, and National Commander of AMVETS; and

WHEREAS, he has also been a member of numerous other organizations, including American Legion, Disabled American Veterans, The Italian American War Veterans, The Combined Veterans Association of Illinois, The Veterans Assistance Commission of Illinois, and The Grand Army of The Republic Memorial Association of Illinois; and

WHEREAS, Lincoln Tamraz has been a member of the Assyrian American National Federation for over 60 years, serving as National President in 1966-1967, and honored as their "Man of the Year" and "Man of the Century"; and

WHEREAS, he served as a member, co-chair, and chairman on the Memorial Day, Veterans Day, Flag Day, Armed Forces Day, and Special Events parade committees for over 25 years; and

WHEREAS, Lincoln Tamraz presently serves as President of the Illinois AMVET Health Care Committee and as National President of PANCO for a second term, where he presides over the past commanders of all veteran organizations; and

WHEREAS, Lincoln Tamraz was awarded the distinguished AMVETS Silver Helmet Americanism Award in Washington, D.C. for the many actions he has taken to honor America, the ideals upon which she was founded, and the sacrifices made by her veterans; and

WHEREAS, the Assyrian American AMVET Post #5 is holding a dinner in his honor on November 4, 2000, in River Grove, Illinois;

THEREFORE, I, George H. Ryan, Governor of the State of Illinois, proclaim November 4, 2000, as LINCOLN S. TAMRAZ DAY in Illinois.

Issued by the Governor November 1, 2000.

Filed by the Secretary of State November 6, 2000.

Rules acted upon during the calendar quarter from Issue 43 through Issue 53 are listed in the Issues Index by Title number, Part number and issue number. For example, 50 Ill. Adm. Code 2500 published in Issue 1 will be listed as 50-2500-1. The letter "R" designates a rule that is being repealed. Inquiries about the Issues Index may be directed to the Administrative Code Division at 217-782-4414 or jnabale@copgate.sos.state.il.us on the Internet.

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